



**OPINION OF THE EUROPEAN CENTRAL BANK**  
**of 2 December 2008**  
**at the request of the Hungarian Ministry of Finance**  
**on a draft law amending the Law on the Magyar Nemzeti Bank**  
**(CON/2008/83)**

**Introduction and legal basis**

On 23 October 2008 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<sup>1</sup> (hereinafter the ‘Law on the MNB’).

The ECB’s competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the second, third, fourth, and fifth indents 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>2</sup>, as the draft law relates to banknotes and coins, the Magyar Nemzeti Bank (MNB), data collection for the central bank information system and to payment and settlement systems. 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 draft law has the following main objectives:

- (a) to align the MNB’s legal framework with the Treaty provisions on central bank independence,
- (b) to regulate the date of taking up of office by Monetary Council Members and their oath,
- (c) to change the current property acquisition restrictions,
- (d) to provide detailed rules on conflicts of interest applicable to MNB officials and employees,
- (e) to authorise: (i) the MNB’s Governor to regulate certain issues concerning central depository activities and central counterparty activities; (ii) the MNB to collect statistical data in anonymous form from other bodies belonging to the official statistical reporting service; (iii) the MNB to involve third parties, i.e. the Post Office and credit institutions, in fulfilling its obligations related to exchanging mutilated or withdrawn banknotes and coins for legal tender; (iv) the forwarding of any

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<sup>1</sup> *Magyar Közlöny.2001. VII. 5.*

<sup>2</sup> OJ L 189, 3.7.1998, p. 42.

counterfeit Hungarian and foreign currency to the designated body through the financial intermediary system and the postal service.

## **2. General observations**

- 2.1 The ECB repeats its previous comments regarding the frequent amendments to the Law on the MNB. 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 MNB, the ECB notes that the Law on the MNB has been amended on several occasions in recent years, often substantially changing the MNB's legal framework, and finds that the introduction of different legal concepts within such a relatively short time has adversely affected the MNB's organisational and governance stability<sup>3</sup>.
- 2.2 The ECB finds it regrettable that the draft law still does not address all the issues highlighted in the ECB's Convergence Report of May 2008.

## **3. Specific observations**

### *Issues regarding the prohibition on monetary financing*

- 3.1 The ECB welcomes Article 4 of the draft law, which inserts an express reference to Article 101 of the Treaty into Article 16(1) of the Law on the MNB, along with the reference to 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<sup>4</sup>, as suggested in the ECB's Convergence Report of May 2008. Concerning Article 14 and Article 71(3) of the Law on the MNB, the Convergence Report also suggests inserting an express reference to Article 101 of the Treaty. Articles 1 and 16 of the draft law insert a reference to Article 16(1) of the Law on the MNB which refers to Article 101 of the Treaty. The ECB considers this serial reference merely a question of legislative technique and finds that the result of referring to Article 101 of the Treaty is achieved.
- 3.2 The ECB notes that while the draft law amends Article 14 and Article 71(3) of the Law on the MNB, it does not specify that loans are extended against adequate collateral. The ECB considers that such a specification would be necessary, since it would introduce an additional safeguard which should minimise the possibility of the MNB suffering any loss.
- 3.3 Article 3 of the draft law, by amending Article 15(1) of the Law on the MNB, extends considerably the list of public sector accounts to be managed by the MNB. It also introduces a new Article 15(2) to the effect that the MNB must pay interest equal to the central bank base rate on the current balance of the single bank account of the Hungarian State Treasury account with the MNB. As addressed in the ECB's Convergence Report of May 2008, national legislation on the fiscal agent

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<sup>3</sup> ECB Opinion CON/2007/14 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.

<sup>4</sup> OJ L 332, 31.12.1993, p. 1.

function, which national central banks (NCBs) are enabled to conduct under Article 21.2 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'ESCB Statute'), should be compatible with the monetary financing prohibition in Article 101 of the Treaty. Compliance with the monetary financing prohibition is affected where national legislation enables the remuneration of deposits or current account balances above, rather than at or below, market rates. In the present case, if the central bank base rate is above market rates, the remuneration margin is above market rates and constitutes a de facto intra-year credit, contrary to the objective of the prohibition on monetary financing, and might undermine the prohibition's objectives. The ECB suggests replacing in Article 3 of the draft law, amending Article 15(2) of the Law on the MNB, the words 'equal to the central bank base rate' with 'below or at market rates'.

#### *Banknotes and coins*

- 3.4 According to Article 8 of the draft law, amending Article 31(9) of the Law on the MNB, the MNB may not pay compensation for the value of banknotes or coins which have been destroyed. The ECB considers that if the destroyed banknotes or coins are legal tender, they should be redeemed, even for a fee, unless there is a suspicion that the destruction is intentional or results from a criminal act.
- 3.5 Referring to Article 9 of the draft law, amending Article 31/A(2) to (4) of the Law on the MNB, the ECB notes that the expert examination should not be prevented by the use or retention of counterfeit banknotes as evidence in criminal proceedings, except when such evidence is impossible, taking into account the quantity and type of seized counterfeits<sup>5</sup>.
- 3.6 Article 9 of the draft law amending Article 31/A(2) to (4) of the Law on the MNB lists the service providers obliged to ensure that euro banknotes and coins that they have received and intend to return to circulation are checked for authenticity. The ECB recommends also taking into consideration future amendments to Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting<sup>6</sup>.

#### *Central bank independence - the Governor's oath*

- 3.7 According to Article 10 of the draft law amending Article 49(7) of the Law on the MNB, Monetary Council members must make an oath or a solemn promise and sign a document before the Hungarian President with the words required by Law XXVII of 2008 on the oath and solemn promise of certain public officials<sup>7</sup>. Since the Monetary Council members are involved in the performance of ESCB-related tasks, the wording of the oath to be sworn by them needs to be adapted to comply with Article 14.3 of the ESCB Statute.

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<sup>5</sup> Recommendation ECB/2006/13 of 6 October 2006 on the adoption of certain measures to protect euro banknotes more effectively against counterfeiting(OJ C 257, 25.10.2006, p. 16).

<sup>6</sup> OJ L 181, 4.7.2001, p. 6.

<sup>7</sup> *Magyar Közlöny 2008. VI. 18.* The wording of the oath is the following: 'I, ...(*name of the designated public officer*), hereby make an oath to be faithful to my home country, to the Republic of Hungary and to its people, I will comply and ensure compliance with the Constitution, together with other laws, I will keep any secrets disclosed to me, I will fulfil my duties arising from my position as a ... (*name of the position*) in order to promote the development of the Republic of Hungary and the application of the Constitution'.

## *Statistics*

- 3.8 The ECB welcomes Articles 6 and 19 of the draft law amending Article 28 of the Law on the MNB and Law XLVI of 1993 on statistics<sup>8</sup>. The ECB finds that the proposed amendments are in line with Community legislation.

## *Recognition of MNB's oversight functions*

- 3.9 The ECB welcomes the intention of the draft law to specify that the MNB's oversight activity is one of its core functions in respect of payment systems, securities clearing and settlement systems and central counterparties. The ECB considers that an important element of the draft law is the express specification of the MNB's oversight powers which lays down a good basis for defining the legal framework of a central bank's oversight function. The draft law also provides for an effective oversight tool by authorising the MNB's Governor to regulate certain issues with regard to securities clearing and settlement infrastructures, including central counterparties.
- 3.10 As noted in previous ECB opinions, an oversight function is inherent in the central bank task of promoting a sound market infrastructure, in order to safeguard the effectiveness of monetary policy and the overall stability of the financial system<sup>9</sup>. It should be recognised in this context that payment systems and security settlement systems (SSS) are interlinked given the use of the mechanism of 'delivery versus payment' under which settlements of securities and transfers of funds take place simultaneously. There is therefore a strong argument for integrating the oversight of payment and securities settlement systems and for the NCB to perform this function. Settlement of both legs of such transactions should be subject to similar safeguards to avoid asymmetries with systemic implications. The role of NCBs in SSS oversight is evident given SSS' crucial role in the functioning of the financial markets and the need for them to be safe and efficient. Oversight of payment and clearing systems is one of the core competencies attributed to the Eurosystem, with its legal basis specified in Article 105(2) of the Treaty and Article 3.1 and Article 22 of the ESCB Statute<sup>10</sup>. In particular, the Eurosystem NCBs perform oversight of payment systems in line with the common oversight policy defined by the ECB's Governing Council, which will also apply to the MNB once Hungary adopts the euro<sup>11</sup>. As noted in previous ECB opinions<sup>12</sup>, the central bank oversight role is also reflected: (i) at international level, in the joint work on SSS concluded by the Committee on Payment and Settlement Systems (CPSS) and the International Organization of

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<sup>8</sup> *Magyar Közlöny*.1993. V. 12.

<sup>9</sup> Paragraph 2.8 of ECB Opinion CON/2006/53 of 16 November 2006 at the request of the Polish Minister of Finance on a draft law amending the Law on trading in financial instruments; see paragraph 3.2 of ECB Opinion CON/2006/20 of 25 April 2006 on the Dutch draft law concerning financial sector supervision and paragraphs 4 to 14 of ECB Opinion CON/1999/19 of 20 January 2000 at the request of the Luxembourg Ministry for the Treasury and the Budget on a draft legislative proposal implementing Directive 98/26/EC [title shortened]; see CPSS, 'Central bank oversight of payment and settlement systems', May 2005, paragraph 1.1; publication available on the BIS website at [www.bis.org](http://www.bis.org).

<sup>10</sup> See paragraph 5 of ECB Opinion CON/2003/14 of 7 August 2003 at the request of the Banca d'Italia on a draft regulation on payment systems, payment infrastructures and payment instruments.

<sup>11</sup> See paragraph 14 of ECB Opinion CON/2005/24 of 15 July 2005 at the request of the Ministry of Finance of the Czech Republic on a draft law on the integration of financial market supervisors; see also paragraph 4.2 of ECB Opinion CON/2006/15 of 9 March 2006 at the request of the Polish Minister of Finance on a draft law on the supervision of financial institutions.

<sup>12</sup> See paragraph 15 of ECB Opinion CON/2005/24.

Securities Commissions (IOSCO)<sup>13</sup>; and (ii) at Community level, in the joint work of the ESCB and the Committee of European Securities Regulators (CESR) in establishing common recommendations for European Union SSS<sup>14</sup>, the mandate for which has recently been reaffirmed by the Council<sup>15</sup>.

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

Done at Frankfurt am Main, 2 December 2008.

[signed]

*The President of the ECB*

Jean-Claude TRICHET

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<sup>13</sup> See e.g. joint CPSS-IOSCO publications 'Recommendations for securities settlement systems', November 2001 and 'Recommendations for Central Counterparties', November 2004; publications available on the BIS website at [www.bis.org](http://www.bis.org).

<sup>14</sup> See press release available on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>15</sup> See: Council Conclusions on clearing and settlement, 2872nd Economic and Financial Affairs Council meeting, Luxembourg, 3 June 2008.