



OPINION OF THE EUROPEAN CENTRAL BANK

of 12 July 2010

on amendments to the Law on the Magyar Nemzeti Bank introducing salary reductions

(CON/2010/56)

Introduction and legal basis

On 1 July 2010, the European Central Bank (ECB) received a request from the Hungarian Ministry of the National Economy for an opinion on a draft law amending, *inter alia*, the Law on the Magyar Nemzeti Bank (hereinafter the 'draft law')¹.

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 provisions², as the draft law relates to the Magyar Nemzeti Bank (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.

1. Purpose of the draft law

- 1.1 On 8 June 2010 the Hungarian Prime Minister announced an action plan containing 29 measures to establish a balanced budget. One of these measures is the implementation of a HUF 2 000 000 monthly wage ceiling in the public sector. This is equal to 10 times the average gross monthly salary of employees in the national economy. According to the explanatory memorandum attached to the draft law, the proposed measure would allow a more performance-based and equitable income distribution in the public sector and would strengthen the public administration's efficiency.
- 1.2 Article 95 of the draft law will amend Article 53(1) of Act LVIII of 2001 on the Magyar Nemzeti Bank (hereinafter 'Law on the MNB') according to which the total salary of the MNB's Governor in a given year will be the total salary established for the Governor for the preceding year, increased by the increment calculated on the basis of the consumer price index expected for the current year, as contained in the convergence programme submitted to the Commission of the

¹ Draft law T/581 on the adoption and amendment of certain economic and financial legal acts, submitted to the Parliament by the Minister for the National Economy on 2 July 2010. Article 95 submitted to the ECB amends the Law on the MNB.

² OJ L 189, 3.7.1998, p. 42.

European Union in the preceding year. Furthermore, according to the ECB's information, the 'total salary of the Magyar Nemzeti Bank's Governor' has been determined in a shareholder resolution by the Minister for Finance on behalf of the Hungarian State in 2000 and has been subject since to Article 53(1) of the Law on the MNB. The proposed provision intends to introduce a ceiling on the Governor's salary providing that 'the total monthly salary of the MNB's Governor shall be, in the period from 1 March of a given year to the end of February of the next year, 10 times the average gross monthly salary of employees in the national economy of the previous year, as officially published by the Central Statistical Office'.

- 1.3 In addition to the Governor, the Deputy Governors, the members of the Monetary Council and the Supervisory Board are also affected by the draft law, since their salary is based on the Governor's salary under Article 53 of the Law on the MNB. Against this background, the proposed changes result in a decrease of approximately 75%, compared to the Governor's present salary, and accordingly the proposed cut in salary would also result in a decrease in the salary of the Deputy Governors, as well as the members of the MNB's Monetary Council and Supervisory Board.

2. General observations

The appropriate time to consult the ECB

- 2.1 The consulting authority submitted Article 95 of the draft law to the ECB on 1 July 2010, requesting the ECB's opinion as soon as possible. According to information received by the ECB, the Parliament expects to adopt the draft law before 19 July 2010 when the spring session of the parliamentary legislative process ends. Once adopted by the Parliament, the relevant provisions of the draft law will enter into force on the eighth day following its publication. Moreover, no explicit time limit for submission of the opinion has been set. Since the date of receipt of the consultation request, further steps towards the adoption of the draft law have been taken in the Hungarian Parliament.
- 2.2 In cases of particular urgency that do not allow for a normal consultation period, the consulting authority may indicate urgency in the consultation request and ask for a shorter deadline for the ECB's opinion to be adopted. The ECB would like to emphasise that even in such cases a minimum one-month deadline applies according to Article 3(1) of Decision 98/415/EC. This does not prejudice the consulting authority's duty under Articles 127(4) and 282(5) of the Treaty to consult the ECB on national draft legislative provisions falling within its fields of competence at an appropriate stage in the national legislation process, as provided by the second sentence of Article 4 of Decision 98/415/EC. This implies that the consultation should take place at a point in the legislative process which affords the ECB sufficient time to examine the draft legislative provisions and to adopt its opinion in all required language versions, and which also enables the relevant national authorities to take the ECB's opinion into consideration before the provisions are adopted.

Article 3(4) of Decision 98/415/EC also obliges Member States to suspend the adoption process for draft legislative provisions, pending receipt of the ECB's opinion.

- 2.3. In the event of extreme urgency, the time limit of one month may be reduced. In accordance with Article 3(2) of Decision 98/415/EC, the consulting authority shall state the reasons for the urgency. The ECB considers that the justification provided by the consulting authority cannot be considered as a case of extreme urgency within the meaning of Article 3(2).
- 2.4 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 the draft law have to be submitted to the ECB to allow it to adopt its opinion on the most recent text. Furthermore, with respect to the present consultation, the process of adoption of the draft law should have been suspended. The ECB's comments on the provisions on which it was consulted do not eliminate the breach of the obligation to consult it. The ECB would appreciate the Ministry for the National Economy giving due consideration to honouring its obligation to consult the ECB in the future.

Legislation subject to consultation

- 2.5 The ECB understands that the draft law amends several legal acts including the Law on the MNB. This opinion only covers Article 95 of the draft law that the consulting authority has submitted for consultation. The ECB also advises that this Opinion is without prejudice to any other ECB opinions concerning the legal acts affected by the draft law and falling under the ECB's competence. The ECB expects to be consulted also on such matters.

3. Central bank independence

- 3.1 When a Statute of a national central bank (NCB) (in this case the Law on the MNB) is amended, the amending law should ensure that central bank independence guaranteed by Article 130 of the Treaty and Article 7 and Article 14.2 of the Statute of the ESCB and the ECB (hereinafter the 'Statute of the ESCB') is respected. Compatibility of a Member State's legislation, including its NCB's Statute, with the requirements of the Treaty and the Statute of the ESCB concerning central bank independence must be ensured on accession to the Union. Compatibility with Article 130 of the Treaty and Article 7 of the Statute of the ESCB is a fundamental aspect of the legal convergence in a Member State examined in the convergence reports required by Article 140(1) of the Treaty to assess a country's readiness to join the euro area.

Financial independence

- 3.2 As recalled in the ECB Convergence Reports 2008 and 2010 and stressed in several ECB opinions³ on issues concerning autonomy in staff matters, an aspect of an NCB's financial independence,

³ ECB Opinions CON/2008/9, CON/2008/10, CON/2009/45, CON/2009/47, CON/2010/42 and CON/2010/51. All ECB opinions are available on the ECB's website at www.ecb.europa.eu.

Member States may not impair an NCB's ability to employ 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 the government of a Member State is in a position to influence the NCB's policy on staff matters.

- 3.3 By amending Article 53(1) of the Law on the MNB, Article 95 of the draft law introduces a threshold for the Governor's salary which results in a decrease of the Governor's salary and consequently the salaries of the Deputy Governors and the members of the Monetary Council and the Supervisory Board.
- 3.4 To protect the MNB's autonomy in staff matters, part of the principle of central bank independence under Article 130 of the Treaty, the Hungarian authorities have an obligation to ensure that any amendment to the legislative provisions on the remuneration of the MNB's staff is decided in cooperation with the MNB, taking due account of the MNB's views⁴.

Personal independence of the members of MNB's decision-making bodies

- 3.5 To comply with the Treaty requirements for personal independence of the members of NCB's decision-making bodies who are involved in the performance of ESCB-related tasks, any amendment to the salaries of the Governor and other members of the MNB's decision-making bodies who are involved in the performance of ESCB-related tasks should not affect the terms under which they have been appointed. Consequently, the draft law should specifically provide that such an amendment may apply only to future appointments⁵.

Conclusion

- 3.6 For these reasons the process for adoption of the draft law should ensure the involvement of the MNB and the draft law should be amended to comply with the principle of central bank independence.

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

Done at Frankfurt am Main, 12 July 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET

⁴ See for example paragraph 4.3 of ECB Opinion CON/2010/42.

⁵ See paragraph 3.2.2 of ECB Opinion CON/2008/10 and ECB Opinion CON/2010/42.