



OPINION OF THE EUROPEAN CENTRAL BANK

of 3 November 2010

**on amendments to the Constitution and on the Law on legislation, regarding the legislative powers
of the Magyar Nemzeti Bank**

(CON/2010/76)

Introduction and legal basis

On 28 September 2010, the European Central Bank (ECB) received a request from the Hungarian Ministry of Public Administration and Justice for an opinion on a draft law on legislation (hereinafter the ‘draft law on legislation’)¹. On 1 October 2010, the ECB received a request from the Hungarian Ministry of Public Administration and Justice for an opinion on a draft law amending Law XX of 1949 on the Constitution of the Hungarian Republic (hereinafter the ‘draft law amending the Constitution’) (the draft law on legislation and the draft law amending the Constitution, hereinafter collectively referred to as ‘the draft laws’). Since the subject matter of the draft laws is closely related, the ECB has merged the two consultations.

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 laws relate 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 laws

In its Decision 121/2009 (XII.17.) the Hungarian Constitutional Court annulled Law XI of 1987 on legislation from 1 January 2011. The reason for the annulment was that most provisions of the Law on legislation did not comply with constitutional developments that had taken place since its adoption. Since the remaining provisions were insufficient to constitute a legal act, the Constitutional Court annulled the Law on legislation as a whole, with such annulment to take effect in the future. The Constitutional Court also requested the legislator to adopt a new law on the same subject matter by 31 December 2010. In response to the Constitutional Court’s decision, the draft law on legislation has been prepared and

¹ On 19 October 2010, the Hungarian Ministry of Public Administration and Justice submitted an updated version of the draft law on legislation.

² OJ L 189, 3.7.1998, p. 42.

submitted to the Hungarian Parliament for adoption. This draft law is to replace the Law on legislation and thus reestablish the legislation framework in Hungary. The decision of the Constitutional Court also obliged the legislator to regulate certain issues in the Constitution instead of the Law on legislation. The draft law amending the Constitution incorporates these issues into the Constitution.

The draft law on legislation establishes the general requirements regarding legislation and regulates the scope, amending procedures, drafting and publication of legal acts, as well as the continuous monitoring of the legal system and the publication of legal acts. Under the draft law on legislation, a Government decree will regulate in further detail the consultation procedures to be carried out with the institutions of the European Union, including with the ECB. The draft law amending the Constitution provides, *inter alia*, what constitutes a legal act, how legal acts should be adopted and published and also refers to the powers of the MNB's Governor to adopt decrees.

2. General observations

- 2.1 The ECB understands the importance of the adoption of the draft laws since a valid legislative framework creates the foundation for the national legislative processes. The ECB also welcomes the establishment of an up to date legislative framework in Hungary that will ensure that the Hungarian authorities duly comply with their consultation obligations at European level.
- 2.2 The ECB notes that under the draft law amending the Constitution, a decree of the MNB's Governor maintains its position in the legislative hierarchy and is at the same level as Government decrees.

3. Specific comments

- 3.1 The ECB welcomes the fact that the draft law on legislation establishes the general rules regarding the consultation procedures to be carried out with the EU institutions and also foresees the adoption of a Government decree that will regulate such procedures in detail. The ECB expects this future Government Decree to comply with Decision 98/415/EC.
- 3.2 The ECB would like to point out that the duty to consult with the ECB is not limited to draft legislative provisions which are to be adopted by a parliament. Decision 98/415/EC covers all types of legally binding provisions, including secondary legislation, as well as generally applicable acts of NCBs or supervisory authorities where these bodies have regulatory powers. However, this does not mean that the ECB should be consulted on all secondary legislation implementing primary legislation falling within the ECB's fields of competence. Given the objectives of Decision 98/415/EC, it is clear that an opinion should only be sought from the ECB on such draft secondary legislation if its subject matter is closely related to the ECB's tasks and if the impact on areas within the ECB's fields of competence differs from that resulting from the primary legislation itself.

3.3 The ECB notes that under Article 20(4) of the draft law on legislation, the MNB's Governor maintains the right to initiate consultation procedures with the ECB with regard to decrees of the MNB's Governor.

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

Done at Frankfurt am Main, 3 November 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET