



## OPINION OF THE EUROPEAN CENTRAL BANK

of 13 December 2010

**on the appointment and dismissal of Monetary Council members and the remuneration of the members of the Magyar Nemzeti Bank's Supervisory Board**

(CON/2010/91)

### **Introduction and legal basis**

On 22 November 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 the Law on the Magyar Nemzeti Bank (hereinafter the 'Law on the MNB') with regards to the appointment and dismissal of Monetary Council members of the Magyar Nemzeti Bank (MNB) (hereinafter the 'draft law concerning the Monetary Council'). On 29 November 2010, the ECB received another request from the Ministry for an opinion on a draft law amending the Law on the MNB with regard to the remuneration of the MNB's Supervisory Board members (hereinafter the 'draft law concerning the Supervisory Board') (hereinafter collectively referred to as the 'draft laws'). The ECB has merged the two consultations as suggested by the consulting authority.

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 provisions<sup>1</sup>, as the draft laws relate to the 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**

#### **1.1 *The draft law concerning the Monetary Council***

The draft law concerning the Monetary Council will amend the applicable appointment and dismissal procedure of some of its members. In addition, it contains provisions on the oath taken by Monetary Council members and the appeal procedure in the event of their dismissal. According to the Law on the MNB, the Monetary Council is the MNB's ultimate decision-making body in respect of certain tasks described in the Law on the MNB<sup>2</sup>. The Monetary Council consists of five

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

<sup>2</sup> These tasks comprise the definition and implementation of monetary policy and certain related tasks such as: issuing banknotes and coins; holding and managing official reserves in foreign exchange and gold; conducting foreign exchange operations in relation to the management of foreign exchange reserves and the implementation of exchange rate policy; developing the payment and settlement systems; collecting and publishing the statistical information required for carrying

to seven members, i.e. the MNB's Governor, as the Chairman, and Deputy Governors, and up to four other members elected by the President of the Hungarian Republic for a term of six years. The President is empowered to appoint and dismiss the Governor and the Deputy Governors. Under the current regime the Governor and the Prime Minister have equal powers to make proposals for the appointment and dismissal<sup>3</sup> of the other members of the Monetary Council. However, under the draft law concerning the Monetary Council, the members other than the Governor and Deputy Governors would be elected and dismissed by the Parliament on the basis of a proposal from the Parliamentary Committee on the Economy and Information Technology. According to the explanatory memorandum, the draft law concerning the Monetary Council would end the involvement of the Governor and the Prime Minister in this procedure.

## 1.2 *The draft law concerning the Supervisory Board*

1.2.1 According to Article 52/A of the Law on the MNB, the MNB's Supervisory Board is responsible for the continuous supervision of the MNB on behalf of the State<sup>4</sup>. The Supervisory Board's competence does not extend to the supervision of tasks related to the European System of Central Banks (ESCB) and the impact of such tasks on the MNB's profit and loss. The Supervisory Board prepares its reports in accordance with such restrictions. The Supervisory Board members are the Chairman, members elected by Parliament, a Ministry representative and a consultant commissioned by the Minister for the National Economy. The remuneration of the Chairman and the other members of the Supervisory Board amounts to 15 % and 10 %, respectively, of the Governor's remuneration received from the MNB. According to Article 53 of the Law on the MNB, the Governor's monthly remuneration for the period from 1 March of a reference year to the end of February of the following year is ten times the national gross monthly average remuneration officially published by the Central Statistical Office for the year preceding the reference year.

1.2.2 The draft law concerning the Supervisory Board changes the rules on the remuneration of Supervisory Board members and will no longer tie their remuneration to the Governor's remuneration. The Chairman will receive HUF 1 200 000 (approximately EUR 4 300) and the other members will receive HUF 800 000 (approximately EUR 2 900). According to the explanatory memorandum, this increase ensures that the remuneration of the Supervisory Board members will be proportionate to the quantity and quality of their work.

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out its tasks; and supporting the efficient development and conduct of policies relating to the prudential supervision of credit institutions and the stability of the financial intermediary system.

<sup>3</sup> According to Article 49(11) of the Law on the MNB, the Governor of the MNB submits a proposal to the President on the appointment or dismissal of two members, in consultation with the Prime Minister. The Prime Minister submits a proposal to the President on the appointment and dismissal of two further members, in consultation with the Governor of the MNB.

<sup>4</sup> According to the Law on the MNB, nomination for membership of the Supervisory Board shall be open to Hungarian citizens who possess excellent professional knowledge on matters relating to credit institutions, financial and accounting disciplines and who are eligible to vote in Hungarian parliamentary elections. The mandate of the members of the Supervisory Board shall be for the duration of the mandate of Parliament and shall last until the expiry of the mandate of Parliament. The Supervisory Board remains in office until a new Parliament elects the new Supervisory Board members within three months from the Parliament's first convening. Members of the Supervisory Board shall be obliged to report to the Parliament responsible for their election or to the Minister responsible for their appointment.

## 2. General observations

- 2.1 As mentioned in previous ECB Opinions<sup>5</sup>, 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 this monetary policy credibility. The Treaty's requirement of 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.
- 2.2 The ECB reiterates and would like to emphasise 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 basis for the central bank's functioning. The ECB notes that the appointment procedure applicable to Monetary Council members has been often amended in the past and that the Law on the MNB has been amended several times this year (with further amendments envisaged), and finds that the introduction of such frequent changes adversely affect MNB's organisational and governance stability<sup>6</sup>.
- 2.3 The ECB is closely following the recent legislative developments in Hungary. The combination of the changes to the remuneration of the members of the decision-making body of the MNB and to the competences of the Governor, i.e. the power to propose the appointment and dismissal of two members of the Monetary Council, under the draft laws or under recently adopted legislation<sup>7</sup>, with the repeated criticism expressed in the recent past by the Government concerning interest rate decisions taken by the MNB raises concerns, as this could be seen as the Government trying to influence the Governor in the performance of his tasks. As the ECB has consistently noted in its Convergence Reports, any such influence would be contrary to Article 130 of the Treaty which requires governments of the Member States to respect the principle of central bank independence and not to seek to influence the members of the decision-making bodies of the national central banks (NCBs) in the performance of their tasks<sup>8</sup>.
- 2.4 The MNB's financial independence and the personal independence of the members of the MNB's decision-making body are still matters of concern. The ECB notes the disregard by the Hungarian Parliament of the ECB's stance on the provisions of the Law on the MNB regarding the remuneration of the members of MNB's governing body<sup>9</sup>. It further notes that the present draft laws still do not address all the issues highlighted in the ECB's Convergence Reports from

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<sup>5</sup> See CON/2007/14 and CON/2008/83. All ECB opinions are published on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>6</sup> See CON/2007/14, CON/2008/83.

<sup>7</sup> See CON/2010/56.

<sup>8</sup> See for example the ECB's Convergence Report 2010, p. 15.

<sup>9</sup> See CON/2010/56.

December 2006 and May 2010 and, in particular, the deficiencies with regard to the independence of the central bank and the prohibition of monetary financing.

- 2.5 The ECB would also like to remind the Hungarian authorities that according to the Law on the MNB, the MNB is to be consulted on draft decisions and legislative provisions related to the tasks of the MNB. According to the ECB's information, the Hungarian authorities failed to comply with this obligation not only with regard to the draft law concerning the Supervisory Board, but also with regard to other legislative provisions (including the budget proposal for 2011).

### **3. Specific observations regarding the draft law concerning the Monetary Council**

- 3.1 The ECB limits its observations to the compatibility of the draft law concerning the Monetary Council with the requirements for personal independence of the members of an NCBs' decision-making bodies under Article 14.2 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'). Under the draft law concerning the Monetary Council, the criteria for the appointment of Monetary Council members remain unchanged<sup>10</sup> as do the rules guaranteeing member's personal independence as regards the security of tenure of office, grounds for dismissal and conflicts of interest. The term of office of Monetary Council members is six years and their mandate terminates upon: expiration of their term of office; resignation; dismissal; or death. The President may dismiss the Governor and Deputy Governors, while Parliament, on the basis of a proposal from the Parliamentary Committee on the Economy and Information Technology, may dismiss other Monetary Council members. A Monetary Council member's mandate may only be terminated by dismissal if the member no longer fulfils the conditions required for the performance of their duties or has been found guilty of serious misconduct.
- 3.2 The ECB understands that the mandate of the current members of the Monetary Council (other than the Governor and Deputy Governors) will expire on 28 February 2011 and that the appointment of new Monetary Council members is necessary to ensure the smooth functioning of the Monetary Council. In order to safeguard the institutional independence of the MNB, the Law on the MNB should clearly provide for the procedures to replace the Governor in the event of the Governor's termination due to expiration of the term of office, resignation, dismissal or death so as to avoid any external ad-hoc interference and, at the same time, ensure the smooth and continuous functioning of the Monetary Council. Any person who takes over the duties of the Governor should benefit from the same safeguards of personal independence, i.e. the same rules applying to the current Governor<sup>11</sup> on security of tenure of office, grounds for dismissal and conflicts of interest.
- 3.3 As regards the draft provisions on the oath to be taken by Monetary Council members, the oath is taken in front of the President by the Governor and Deputy Governors and in front of the

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<sup>10</sup> Monetary Council members shall be Hungarian citizens with outstanding theoretical knowledge and/or experience related to monetary, financial and/or credit institution activities.

<sup>11</sup> Similarly, see CON/2010/37, paragraph 2.1.

Parliament by the other members. As noted in the ECB's Convergence Report of 2010, the Law on the MNB refers to a separate law that specifies the wording of the oath. The wording of the oath should be adapted in order not to hinder the Governor and the other members of the Monetary Council from performing ESCB-related tasks.

#### **4. Specific observations regarding the draft law concerning the Supervisory Board**

- 4.1 The ECB would like to remind the consulting authority that on 1 July 2010, the ECB received a request for an opinion on a draft law that intended to introduce a HUF 2 000 000 (approximately EUR 7 300) cap on the Governor's remuneration. According to the explanatory memorandum, the proposed measure was aimed at allowing a more performance-based and equitable income distribution in the public sector and at strengthening the public administration's efficiency. The proposed cap represented a reduction of approximately 75% in the Governor's remuneration and indirectly in the remuneration of the Deputy Governors, members of the Monetary Council and of the Supervisory Board as their remuneration was based on the Governor's remuneration. The Law was adopted on 22 July 2010 and published on 13 August 2010<sup>12</sup> (hereinafter the 'Law limiting the Governor's remuneration'). The relevant provision of the Law limiting the Governor's remuneration disregarded the ECB's legal position and did not comply with the ECB's Opinion, which required involving the MNB in the legislative process and ensuring that the security of tenure of the current Monetary Council members was not affected. The salary cap became effective in September 2010.
- 4.2 The new members of the Supervisory Board were appointed in the second half of November 2010. Under the draft law concerning the Supervisory Board, remuneration of Supervisory Board members is no longer tied to the Governor's remuneration. On the basis of the available information<sup>13</sup>, the ECB understands that pursuant to this provision, the Government intends to raise the new Supervisory Board members' remuneration to the level existing prior to the introduction of the Law limiting the Governor's remuneration and that the new Supervisory Board members will fall under the Law limiting the Governor's remuneration for only a short period of time.
- 4.3 Formally, the proposed provisions regarding the Supervisory Board members' remuneration comply with the Treaty and the Statute of the ESCB. Practically, if the draft law concerning the Supervisory Board is adopted in its current form, the MNB will face a situation where the increased remuneration of the Supervisory Board members will exceed the remuneration of certain Monetary Council members, which was recently reduced. The explanatory memorandum to the draft law concerning the Supervisory Board explains that the salary increase is based on proportionality between the quantity and quality of work. Against this background (see paragraphs 4.1, 4.2 and this

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<sup>12</sup> Law XC of 2010 on the adoption and amendment of certain economic and financial legal acts.

<sup>13</sup> The Governor's remuneration before the cut amounted to approximately HUF 8 000 000 (approximately EUR 29 100). The Chairman's and the other members of the Supervisory Board remuneration was set out as 15 % and 10 % of the Governor's remuneration, amounting to approximately HUF 1 200 000 (approximately EUR 4 300) and 800 000 (approximately EUR 2 900), respectively.

paragraph), the recent amendment to the Law on MNB with regard to the remuneration of the Governor and members the Monetary Council and Supervisory Board - compared to the proposed increase of the remuneration of only the Supervisory Board members - raises concerns that pressure is being placed on the current Governor and the members of the MNB's decision making body who are involved in the performance of ESCB-related tasks which would be inconsistent with central bank independence (see also paragraph 2.3).

- 4.4 In the same spirit, the current economic situation and the announced intention of the Government to reduce remuneration in the public sector, such as in case of the Governor and the other members of the Monetary Council, raises doubts as to whether the increase in the remuneration of the new Supervisory Board members has been timed properly.

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

Done at Frankfurt am Main, 13 December 2010.

[signed]

*The President of the ECB*

Jean-Claude TRICHET