



OPINION OF THE EUROPEAN CENTRAL BANK

of 31 May 2012

on the Law on the Magyar Nemzeti Bank

(CON/2012/43)

Introduction and legal basis

On 18 May 2012, the European Central Bank (ECB) received a request from the Hungarian Ministry for the National Economy for an opinion on an amended version of a draft law (hereinafter the ‘amended draft law’) introducing changes to Law CCVIII of 2011 on the Magyar Nemzeti Bank (hereinafter the ‘MNB Law’)¹. The ECB has previously expressed its views on an earlier version of the draft law in Opinion CON/2012/26.

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 amended 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 amended draft law

The amended draft law differs from its earlier version, on which the ECB commented in Opinion CON/2012/26, and it introduces several additional amendments to the MNB Law.

With regard to the rules for dismissal of Monetary Council members, the amended draft law introduces changes to Article 46(10) of the MNB Law, instead of repealing it, as was the case in the earlier version of the amendments. The two explicit grounds for dismissal of the members of the Monetary Council are now replaced by a reference to 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’). Related amendments to Articles 46(12), 47(5) and 47(6) further specify the procedure for dismissal of the members of the Monetary Council members. Article 77 of the MNB Law introduces changes to the title of the Labour Court which is referred to in Articles 46(12) and 47(5) of the MNB Law³. Article 77 of the MNB Law has also been

¹ *Magyar Közlöny*, 2011/166., 30.12.2011, p. 41648.

² OJ L 189, 3.7.1998, p. 42.

³ With effect from 1 January 2013 the Labour Court shall be called ‘Administrative and Labour Court’.

amended by the addition of explicit references to Article 14.2 of the Statute of the ESCB and the jurisdiction of the Court of Justice of the European Union.

The amended draft law is unchanged regarding the repeal of Article 34 and Article 46(17) of the MNB Law. Article 34 contains the MNB's obligation to submit the agendas for Monetary Council meetings to the Government and the right of the Government's representative to be present at Monetary Council meetings. Article 46(17) provides for the abolition of the Monetary Council when Hungary adopts the euro.

The amended draft law no longer contains a repeal of Article 30 of the Transitional Provisions to Hungary's Fundamental Law, which had allowed for the possibility of a merger of the MNB and the Hungarian Financial Supervisory Authority. The ECB understands that the provision repealing Article 30 of the Transitional Provisions to Hungary's Fundamental Law has been carved out in a stand-alone bill, which will be voted on by Parliament at the same time as the amended draft law.

2. General observations

The ECB welcomes the fact that the Hungarian authorities have taken into account the ECB's earlier observations in Opinion CON/2012/26 regarding Article 46(10) of the MNB Law, thereby strengthening legal certainty with respect to the grounds for dismissal of Monetary Council members. However, the amended draft law still fails to address a number of previously highlighted concerns as regards the MNB's independence. Therefore, the ECB maintains its view that the provisions of the current MNB Law do not go far enough to re-establish central bank independence, notwithstanding this move in the right direction, as provided by the amended draft law.

The frequency of amendments to the MNB Law has been criticised in previous ECB Opinions, as it contributes to an unstable basis for the operation of the MNB. Against this background, the ECB emphasises its preference for addressing the remaining open issues on the MNB's independence listed below as part of the present parliamentary procedure on the MNB Law amendments in order to avoid making further amendments at a later stage.

3. Possibility to vary the number of Monetary Council members; appointment of a third Deputy Governor

The concerns expressed in Opinions CON/2011/104, CON/2011/106 and CON/2012/26 on the composition of the MNB's decision-making bodies are still valid. In particular, it is of concern that the number of Monetary Council members can be varied, and a third Deputy Governor can be appointed, and that such steps can be taken without consulting the MNB and considering its needs, or without providing reasonable arguments to support an expansion against the MNB's advice. This situation gives rise to concerns as to whether these provisions could be used to influence decision-making processes, to the detriment of central bank independence.

4. Executive powers of the Monetary Council

The fact that the Monetary Council has a mandate on policy implementation and the day-to-day running of the MNB also raises concerns. Such a mandate allows for the Monetary Council to be responsible not only for setting policies, but also for (a) their implementation, and (b) the oversight of its own actions. These concerns are exacerbated by the fact that different standards apply to the employment and other legal relationships of executive and non-executive members of the Monetary Council.

5. Remuneration of the MNB's decision-making bodies

The ECB remains concerned about the frequent changes to the remuneration of the members of the MNB's decision-making bodies. Such changes have been made without the MNB's prior consultation and with disregard for its views. This conduct amounts to pressure on the members of the MNB's decision-making bodies by the national authorities⁴. The ECB repeats its view that, in its present form, Article 51 of the MNB Law should only apply for future appointments following prior consideration of the MNB's views.

6. Other outstanding concerns related to the MNB Law

6.1 Grounds for dismissal of the members of the Monetary Council

The MNB Law provides for a unique two-step dismissal procedure of the members of the Monetary Council. The first step involves notifying the person concerned about a proposal for his dismissal. The decision to make a proposal for a dismissal is taken by the Parliament's competent committee with regard to the external members of the Monetary Council, and by the Prime Minister with regard to the Governor and other Monetary Council members. This proposal for dismissal is subject to judicial review under national law. In the second step, the proposal for dismissal can only be submitted to the President of Hungary if no action for domestic judicial review has been filed or following the final ruling of the Labour Court. The amended draft law specifies that the right to appeal to the Labour Court does not prejudice the right to appeal to the Court of Justice as specified in Article 14.2 of the Statute of the ESCB.

The ECB welcomes the reference to Article 14.2 of the Statute of the ESCB which stipulates that governors of national central banks who have been dismissed from office may refer such a decision to the Court of Justice. National legislation should either refer to the Statute of the ESCB or remain silent on the right to refer such a decision to the Court of Justice as Article 14.2 of the Statute of the ESCB is directly applicable⁵. Consequently, the decision of the President of Hungary to dismiss the Governor is open for review by the Court of Justice which has exclusive jurisdiction as regards a decision to relieve a governor from office. At the same time, to ensure continuity of the MNB's

⁴ See, for example, paragraph 4.3 of Opinion CON/2010/56, paragraph 8 of Opinion CON/2011/104, and paragraph 4.3 of Opinion CON/2011/106.

⁵ See Section 2.2.3 of the ECB's Convergence Reports May 2010 and May 2012.

operations, it is advisable that the amended draft law should provide for consultation with the MNB's Executive Board by the Prime Minister before the initiation of a dismissal procedure for the MNB Governor. Furthermore, the ECB understands that the amended draft law intends to limit the President's power to dismiss the MNB Governor where the Labour Court has ruled in favour of the proposal for dismissal. However, in order to remove the scope for different interpretations, the legal drafting of this provision could be improved.

6.2 *Replacement of the Governor*

The ECB reiterates its observation from Opinion CON/2010/91 related to the replacement of the MNB's Governor. Pursuant to Article 47(8) of the MNB Law, the Deputy Chair of the Monetary Council may replace the Governor in the latter's absence. The MNB Law needs to provide sufficient guarantees and rules for a successor to the Governor in the event of termination of office due to expiry of the term of office, resignation, dismissal or death to avoid any external ad hoc interference and at the same time to ensure the smooth and continuous functioning of the Monetary Council⁶.

6.3 Other remaining issues are specified in the ECB's Convergence Reports and concern, *inter alia*, the oath taken by the MNB's Governor and Deputy Governors, the single spelling of the euro in several Hungarian legal acts and the requirements for legal integration of the MNB into the Eurosystem⁷. Previous ECB Opinions have already pointed out that the recast of the MNB Law offered the Hungarian authorities the opportunity to make the necessary adjustments to ensure the MNB's full integration into the Eurosystem when Hungary adopts the euro.

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

Done at Frankfurt am Main, 31 May 2012.

[signed]

The Vice-President of the ECB

Vítor CONSTÂNCIO

⁶ See paragraph 3.2 of Opinion CON/2010/91.

⁷ The ECB's Convergence Reports are available on the website of the ECB under www.ecb.europa.eu.