



## OPINION OF THE EUROPEAN CENTRAL BANK

of 28 June 2012

on the Magyar Nemzeti Bank

(CON/2012/49)

### Introduction and legal basis

On 20 June 2012, the European Central Bank (ECB) received a request from the Hungarian Ministry for the National Economy for an opinion on a new draft law (hereinafter the ‘draft law’) introducing changes to Law CCVIII of 2011 on the Magyar Nemzeti Bank (hereinafter the ‘MNB Law’)<sup>1</sup>. Previous ECB Opinions considered earlier versions of the draft law, now withdrawn from the Parliament<sup>2</sup>.

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>3</sup>, 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**

The draft law introduces additional amendments to the MNB Law compared to the previous draft legislation on which the ECB commented in Opinion CON/2012/43.

The draft law amends Article 46(1) of the MNB Law to better delineate the division of responsibilities between the Monetary Council, which will focus strictly on policy formulation and related oversight activities, and the Executive Board, which will be solely responsible for policy implementation.

The draft law limits the possible combinations of the number of executive and non-executive members of the Monetary Council, by specifying in Article 46(3) that the number of non-executive members should be higher than the number of executive members, but by less than a two-to-one ratio.

With regard to the rules for dismissal of Monetary Council members, the draft law carries over verbatim from the previous draft legislation<sup>4</sup> the changes to Articles 46(10), 46(12), 47(5), 47(6), 77(1) and 77(2)

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

<sup>2</sup> Opinions CON/2012/26 and CON/2012/43. All ECB Opinions and Convergence Reports are available on the ECB’s website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>3</sup> OJ L 189, 3.7.1998, p. 42.

<sup>4</sup> See ECB Opinion CON/2012/43.

of the MNB Law. These amendments clarify the procedure for dismissal of members of the Monetary Council and align it with 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'). The draft law further improves the wording of Article 47(6) by stipulating that a proposal for dismissal of the MNB Governor first requires a final ruling by the Labour Court that the conditions for dismissal specified in Article 14.2 of the Statute of the ESCB are met. In addition, the draft law aligns the wording of Article 46(13), regulating the circumstances under which the other members of the Monetary Council can be removed from office, with the new wording of Article 47(6).

The draft law carries over from the previous draft amendment law, on which the ECB commented in Opinion CON/2012/43, the repeal of Article 34 and Article 46(17) of the MNB Law. These amendments remove 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, as well as the abolition of the Monetary Council when Hungary adopts the euro.

Finally, the draft law inserts a new Article 36(5) in the MNB Law to limit in time the disclosure of non-classified data related to the management of gold and foreign exchange reserves for up to 10 years. Within this period the MNB Governor decides on the disclosure of such data.

Since the adoption of CON/2012/43, Article 30 of the Transitional Provisions to Hungary's Constitution - which had allowed for the possibility of a merger of the MNB with the Hungarian Financial Supervisory Authority - has been repealed through a separate amendment to the Constitution.

## **2. General observations**

The draft law addresses the most important remaining concerns regarding the MNB's independence. The ECB notes that this time the MNB was consulted on the draft law, as required by national legislation<sup>5</sup>. The draft amendments, alongside a commitment<sup>6</sup> not to increase the size of the Monetary Council during the term of the current MNB Governor, are an indication that the Hungarian Government is now ready to respect the MNB's institutional independence. The ECB will monitor closely the observance in practice of central bank independence, and will continue to liaise with the Hungarian Government to address the remaining open issues, which were also acknowledged in the consultation letter.

## **3. Specific observations**

### *3.1 Distribution of executive power among MNB decision-making bodies*

The draft law fully resolves the concerns in ECB Opinion CON/2012/43.

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<sup>5</sup> According to Article 32 of the Law on MNB, the MNB has to be consulted on any draft legal acts related its tasks.

<sup>6</sup> The public commitment was made in letters on 18 June 2012 - referenced in the letter consulting the ECB - by Prime Minister Mr Orbán to Commission President Mr Barroso and by the Chair of the Parliamentary Committee on Economic and Information Technologies Mr Rogán to Commission Vice-President Mr Rehn.

3.2 *Possibility to vary the number of Monetary Council members; appointment of a third Deputy Governor*

The MNB governance structure has been changed through making the number of non-executive members of the Monetary Council larger, but not by a wide margin, than the number of executive members. This aims to safeguard the MNB's independence and in practice limits the ability of the Government to vary the number of Monetary Council members. Furthermore, the commitment<sup>7</sup> not to increase the size of the Monetary Council during the term of the current MNB Governor addresses the immediate concern at the lack of consultation of the MNB on the issue. However, the introduction of additional checks and balances in this area is advisable. One possibility is the introduction of a consultation procedure with the Governor in office before appointing any new members to the Monetary Council. This would ensure the necessary dialogue between the appointing body and the central bank and the consideration of the MNB's needs. Another possibility is staggering the terms of office of members of the Monetary Council, which would ensure policy continuity and make it less likely that all Monetary Council members are appointed by the same Government.

3.3 *Rules of dismissal of Monetary Council members*

The draft law addresses in a satisfactory manner the issues of personal independence of the members of the MNB's decision-making bodies related to the rules on their dismissal, which were raised in ECB Opinions CON/2012/26 and CON/2012/43. Article 46(13) of the draft law clarifies that in the two step dismissal procedure<sup>8</sup> provided by the MNB Law, the national court examines whether the conditions for dismissal specified in Article 14.2 of the Statute of the ESCB are met and the decision to make a proposal for a dismissal can only be 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, if the court establishes that these conditions are met.

The ECB understands that the express reference in Article 47(5) of the MNB Law to Article 14.2 of the Statute of the ESCB clarifies that, in the event of a decision to dismiss the MNB Governor, the Governor may refer the decision to the Court of Justice irrespective of having sought remedy at the national court against the motion for dismissal.

3.4 *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 earlier changes had been made without the MNB's prior

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<sup>7</sup> See footnote 5.

<sup>8</sup> As specified in paragraph 6.1 of CON/2012/43, the first step involves notifying the person concerned about a proposal for dismissal. The proposal for dismissal is subject to judicial review under national law. The proposal for dismissal can only be submitted to the Parliament, or in respect of the Governor and Deputy Governors to Hungary's President if no action for domestic judicial review has been filed or following the final ruling of the Labour Court. The second step is a decision to dismiss the Governor and Deputy Governors by Hungary's President, and for other members of the Monetary Council, by the Parliament.

## ECB-PUBLIC

consultation and disregarding its views<sup>9</sup>. The ECB reiterates its view that, in its present form, Article 51 of the MNB Law should only apply for future appointments and subject to prior consideration of the MNB's views.

### 3.5 *Empowering the MNB Governor to limit disclosure of data related to management of gold and foreign exchange reserves*

When Hungary adopts the euro, a safeguard clause should be inserted in the newly introduced Article 36(5) on the confidentiality regime for foreign reserve management to prevent infringements of specific confidentiality obligations towards the ECB and the European System of Central Banks in the area of foreign reserves management.

## 4. **Other outstanding concerns related to the MNB Law**

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 Council<sup>10</sup>.

Other issues concern, *inter alia*, the oath taken by the MNB's Governor and Deputy Governors and the single spelling of the euro in several Hungarian legal acts. Previous ECB Opinions and Convergence Reports have also pointed out the requirements for the MNB's legal integration into the Eurosystem<sup>11</sup> and that the recast of the MNB Law offered the Hungarian authorities the opportunity to meet those requirements.

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

Done at Frankfurt am Main, 28 June 2012.

[signed]

*The Vice-President of the ECB*

Vítor CONSTÂNCIO

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<sup>9</sup> See, for example, paragraph 3.3 of Opinion CON/2010/56, paragraph 8 of Opinion CON/2011/104 and paragraph 4.3 of Opinion CON/2011/106.

<sup>10</sup> See paragraph 3.2 of Opinion CON/2010/91.

<sup>11</sup> See, for example, ECB Convergence Report 2012, p. 58.