EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 26 November 2012

on amendments to the Law on the financial transaction tax

(CON/2012/94)

Introduction and legal basis

On 12 November 2012, the European Central Bank (ECB) received a request from the Hungarian Ministry for the National Economy for an opinion on specific provisions of a draft law[1] amending taxation laws, including Law CXVI of 2012 on the financial transaction tax[2] (hereinafter the 'FTT Law'). On 19 November 2012, the ECB received an amended version of the draft law from the Ministry (hereinafter the 'draft law'), and on the same day the Hungarian Parliament adopted the draft law. The ECB has previously expressed its views on the FTT Law in Opinion CON/2012/59[3].

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) and Article 2(2) 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[4], as the draft law concerns the Magyar Nemzeti Bank (MNB) and its instruments of monetary policy. 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 amends the FTT Law in the following manner:

(i) the draft law excludes from the base of the financial transaction tax (FTT) the issuance of MNB bills with a maturity of up to two weeks on the primary market and the placement of overnight deposits with the MNB;

(ii) from 1 January 2013, in addition to payment transactions already covered by the FTT Law[5], other transactions will also become subject to the FTT; *inter alia*, loan repayments, fees and

1 Draft Law No T/8750, amending proposal No T/8750/77 submitted by the Parliament's Audit and Budget Committee and amending proposal No T/8750/101 submitted by the Minister for the National Economy.

2 Published in *Magyar Közlöny* 2012/98 (VII. 23.).

3 All ECB opinions are available on the ECB's website at www.ecb.europa.eu.

4 OJ L 189, 3.7.1998, p. 42.

5 I.e. outgoing transfers from accounts owned by clients other than financial intermediaries.

commissions charged by financial services providers, and credit card payments. At the same time, the draft law raises the applicable FTT rate from 0.1 to 0.2% of the amount of the transaction, leaving the HUF 6 000 per transaction cap in place;

(iii) the provisions of the draft law concerning transactions with securities will come into force on the day following the adoption of a proposal of the European Commission for a Council directive on a common system of financial transaction tax, amending Directive 2008/7/EC[6]. According to these provisions, the FTT will apply to all transactions on securities, including derivatives transactions, whereby the FTT rate will be 0.01% on derivatives transactions and 0.1% on other securities transactions without an applicable cap per transaction. Transactions with any kind of security issued by the MNB as an instrument of monetary policy will be exempted from the FTT, including on secondary markets. Furthermore, the provisions of the FTT are not applicable to the MNB. However, even though the MNB is exempted from paying the FTT, account managers of counterparties to securities transactions with the MNB (hereinafter 'counterparties') will be liable to pay the FTT, if these transactions involve a change in the ownership of securities other than securities issued by the MNB.

2. Breach of the consultation obligation

The ECB received the request from the Ministry for an urgent consultation on the draft law on 12 November 2012. The consultation request does not specify a time by which the Hungarian authorities would like to receive the ECB's opinion, but it refers to the fact that, for any taxation legislation, Hungarian law requires a 30-day intermediary period between its publication and entry into force. Therefore, according to the consultation request, the draft law should be adopted and published by 1 December 2012 for it to enter into force from 1 January 2013. A new version of the draft law was received by the ECB on 19 November 2012. The consultation requests fail to mention when the Hungarian Parliament is scheduled to vote on the draft law. The Hungarian Parliament adopted the draft law at its 19 November 2012 session.

According to Article 4 of Decision 98/415/EC, the ECB must be consulted 'at an appropriate stage' in the legislative process. This implies that the consultation should take place at a point in the legislative process that affords the ECB sufficient time to examine the draft legislative provisions and adopt its opinion.

Following from the wording of Article 3(4) of Decision 98/415/EC, Member States are obliged to suspend the process for adoption of the draft legislative provision pending submission of the ECB's opinion to allow the relevant national authorities to meaningfully deliberate the ECB's opinion prior to adoption of the provisions.

In this respect, the ECB once again stresses 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

6 COM(2011) 594 final.

in accordance with Decision 98/415/EC. The Hungarian Government should have postponed the final vote on the draft law until such time that would have allowed for a proper consultation with the ECB, as well as due consideration of the ECB Opinion. Furthermore, the ECB would appreciate the Ministry honouring its obligation to consult the ECB in due time in the future.

3. Impact of the FTT on MNB's tasks and functions

3.1 The ultimate objective of monetary policy in Hungary is achieving and maintaining price stability in line with the Treaty, the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB') and the Law on the MNB[7]. As part of its monetary policy framework, the MNB issues MNB bills and conducts open market operations, thus affecting banking sector liquidity and hence the wider spectrum of interest rates.

With regard to the MNB's performance of its task to define and implement monetary policy, the Hungarian authorities must respect the principle of central bank independence referred to in Article 130 of the Treaty and Article 7 of the Statute of the ESCB. Measures that directly or indirectly influence the MNB's means and instruments necessary for achieving price stability independently of any other authority are not in line with the Treaty requirements for functional independence.

While the principle of central bank independence does not preclude the imposition of taxes on certain transactions in which a national central bank can be involved (e.g. tax on real estate purchases, VAT related to purchased goods and services), such taxes must be imposed in a manner that does not interfere with the pursuit of a national central bank's objectives. In this respect, the ECB makes the following specific observations.

3.2 *Application of the tax on transactions to which the MNB is a party*

The ECB welcomes that the Hungarian authorities have taken into account Opinion CON/2012/59, by excluding from the base for taxation the issuance of MNB bills with a maturity of up to two weeks on the primary market and the placement of overnight deposits with the MNB.

The exemption of transactions with any kind of security issued by the MNB as an instrument of monetary policy, including on secondary markets, is also commendable, as it safeguards an important aspect of the MNB's functional independence.

At the same time, according to the Law on the MNB, the issuance of securities is just one of a range of monetary policy instruments available to the MNB. Therefore, the range of monetary policy instruments includes further transactions that will be subject to the FTT. In particular, counterparties to securities transactions with the MNB, initiated by the MNB to achieve its monetary policy objectives, will be liable to pay the FTT on such transactions, if they involve a

7 Law CCVIII of 2011 on the Magyar Nemzeti Bank.

change in the ownership of securities other than securities issued by the MNB, for example, counterparties to collateralised liquidity-providing operations of the MNB, where the collateral is not MNB-issued securities. In this respect, the ECB considers that the imposition of the FTT on counterparties to the MNB's monetary policy transactions has a similarly negative impact on the central bank's capacity to set independently the conditions of such transactions in line with the intended monetary policy objectives, as if the central bank itself was liable to pay the FTT. This negative impact resulting from the imposition of an FTT on securities transactions with the MNB is not in line with the MNB's functional independence.

The ECB therefore recommends that the Hungarian government further exempts from the payment of the FTT all counterparties to transactions with the MNB, initiated by the MNB to achieve its monetary policy objectives; i.e. counterparties to transactions with securities that have not been issued by the MNB.

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

Done at Frankfurt am Main, 26 November 2012.

[signed]

The President of the ECB

Mario DRAGHI