EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK
of 12 February 2013
on deposit taking and securities account management by the Treasury
(CON/2013/12)

Introduction and legal basis

On 21 January 2013, the European Central Bank (ECB) received a request from the Hungarian Ministry for the National Economy for an opinion on the draft law amending several laws implementing Government Resolution 1101/2012 (IV. 5.) on measures necessary to increase the stock of government debt held by households (hereinafter 'the Government Resolution').

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 sixth 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[1], as the draft law concerns rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. 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 several laws as follows.

(i) The Law on credit institutions and financial enterprises[2] to enable the Hungarian Treasury to accept deposits. These amendments will, *inter alia*, provide for:

- (a) the conditions for the Hungarian Financial Supervisory Authority (HFSA) to grant and revoke a licence for the Treasury to accept deposits and manage securities accounts;
- (b) the Treasury to join the Hungarian Deposit Insurance Fund;
- (c) the Treasury providing information on its activities, similarly to credit institutions, to the relevant authorities;
- (d) the Treasury to be subject to the supervision of the HFSA, which will have the power to impose sanctions on the Treasury should it not meet the statutory requirements for accepting deposits and managing securities accounts.

1 OJ L 189, 3.7.1998, p. 42.
2 Law CXII of 1996.

(ii) The Law on preventing and combating money laundering and terrorist financing[3] to ensure that the Treasury is subject to the same requirements in combating money laundering as any other financial institution.

(iii) Several laws governing specific employment relationships (laws on the officers of the armed forces[4], the civil servants[5], the public servants[6] and the Labour Code[7]) to enable public service employees to give a standing order to their employers to transfer a specific amount of their salaries monthly to a securities account held at the Treasury for the purposes of purchasing government securities. In the understanding of the ECB, the standing order would be voluntary, revocable and subject to automatic revocation on termination of the employment relationship. The draft law prohibits public sector employers from charging employees for making the transfers to the Treasury.

The draft law will enter into force on 1 April 2013. The Treasury would be subject to a licensing procedure and significant restructuring of its activities and institutional set-up for its new tasks. In this respect, the draft law does not specify when the Treasury would start providing these new services to the public and to public service employees.

2. General observations

2.1 Scope of the consultation

The ECB assesses only the broader implications of the draft law for financial stability and for the financial soundness of the proposed new Treasury activities. Given that the draft law is part of a wider legislative framework mentioned in paragraph 5, on which the ECB has no further information, a comprehensive assessment of the detailed rules for entrusting the Treasury with deposit taking and securities account management is beyond the scope of this opinion. However, the ECB has to be consulted on all additional elements of this wider legislative framework which fall within its competence under Article 2 of Decision 98/415/EC, also with a view to Article 127(5) of the Treaty, which provides that the European System of Central Banks contributes to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.

2.2 Appropriate time to consult the ECB

The ECB received the request from the Ministry for the National Economy for an urgent consultation on the draft law on 21 January 2013, requesting the ECB's opinion to be adopted by 11 February 2013.

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3 Law CXXXVI of 2007.

4 Law XLIII of 1996.

5 Law CXCIX of 2011.

6 Law XXXIII of 1992.

7 Law I of 2012.

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 consider 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 at an appropriate stage in legislative process that allows sufficient time for (i) the ECB to examine the draft legislative provisions and adopt its opinion, and (ii) the national authorities to take into account the ECB's views in accordance with Decision 98/415/EC. Therefore, the ECB would appreciate the Ministry honouring its obligation to consult the ECB in due time in the future.

3. Prohibition on monetary financing

Article 123(1) of the Treaty prohibits overdraft facilities or any other type of credit facility with the ECB or the national central banks of the Member States in favour of Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States, and the purchase of debt instruments directly from them by the ECB or national central banks. This prohibition prevents central banks from providing overdraft facilities or any other type of credit facility to the public sector, including any financing of the public sector's obligations vis-à-vis third parties.

The ECB understands that the Treasury will not become a credit institution. Therefore, provided the ECB's understanding is correct and the Treasury will remain part of the public sector within the meaning of Article 123 of the Treaty, and will not be an eligible counterparty for central bank refinancing operations, the ECB has no monetary financing concerns at this stage of the legislation.

4. Impact of the draft law on financial institutions

Though intended to facilitate households' access to the government bond market, the draft law gives the Treasury broader powers to act as a deposit-taking institution. The draft law does not explicitly preclude the Treasury from offering ATM withdrawals and bank transfers, or using the float on household accounts held with it, i.e. any portion of the transferred funds that is not immediately invested in government securities, to temporarily finance the deficit.

Deposit-taking would place the Treasury, a public institution, in direct competition with banks, which are operated as for-profit commercial entities. Unless the unit of the Treasury entrusted with deposit services to households is completely ring-fenced from the rest of the Treasury functions, and is subjected to the same regulatory, supervisory and tax burden as commercial banks, the Treasury will have an advantage over commercial banks in attracting deposits. This could distort competition in the banking sector and potentially lead funds currently available to banks to be diverted to direct financing of the Government. The resultant reduced lending capacity of banks would further limit corporations' and households' access to credit, potentially undercutting economic growth. In addition, any associated loss of net interest and fee income by banks will lower their profitability.

Therefore, the ECB recommends that a comprehensive impact study of the draft law on the financial sector, with input from affected parties such as banks and investment firms, is carried out prior to submitting the draft law to Parliament. Based on the findings, steps should be taken to minimise the potential adverse impacts of such measures on financial stability and the economy.

5. Suitability of the Treasury to carry out the new tasks

In general, it is possible for the State as a shareholder to own credit institutions carrying out semi-public functions while operating under general market conditions, with the shareholder bearing all the consequences of the credit institution carrying out its functions at a profit or at a loss. However, the draft law does not follow this approach.

An entity entrusted with the new tasks set out in the draft law should also be provided with the expertise, structural set-up and financial resources necessary to carry out these functions. The draft law entails no such provisions. The ECB is aware of that the draft law is part of a planned broader legislative framework to implement the Government Resolution. As managing deposit and securities accounts for the public are not core tasks for a budgetary institution, the Government Resolution foresees the amendment of several legal acts, and also provides for several agreements to enable the Treasury to, *inter alia*, develop its information technology infrastructure and obtain new offices for the public to access. Furthermore, it provides for the Government Debt Management Agency to change its practice relating to the maturity of government bonds intended for households, the possibility to involve the Hungarian Postal Services and its offices for the public to open accounts with the Treasury, and, similarly, the possibility to involve government public service offices for this purpose. However, the ECB has no further information on any of the additional draft laws and arrangements necessary to implement the Government Resolution.

The envisioned new tasks must not interfere with the proper functioning of the core Treasury tasks or with sound practices of public debt management. More specifically, a possible shortening of government debt maturities would tend to increase short-term fiscal vulnerabilities due to higher rollover risks. As regards the provisions of the Government Resolution creating a wider framework for the draft law, the ECB notes that any changes in the Government Debt Management Agency's practice relating to the maturity of government bonds should minimise fiscal risks.

Also with respect to the observations below, the ECB is of the view that an entity operating as a credit institution rather than a budgetary institution should provide for a more transparent and prudent operational framework for the fulfilment of these tasks.

6. Effectiveness of the safeguards assigned to the new activities of the Treasury

The draft law introduces safeguards for the lawfulness of the Treasury's new deposit-taking activities. Deposit-taking by the Treasury would in effect result in the Treasury operating as a bank, so such activities would be subject to regular banking supervision. As both the Treasury and the HFSA are public institutions run by the State, it must be ensured that the Treasury is properly supervised and that the HFSA's micro-prudential supervision treats the Treasury equally to other credit institutions.

7. Provision of information on deposit taking liabilities to the national central bank

The ECB supports the provision of information by the Treasury on deposit taking liabilities to the national central bank, as they may be regarded as central government deposit liabilities with a monetary character. The ECB directs the national authorities to Article 6 and Part 3 of Annex III to Guideline ECB/2007/9 of 1 August 2007 on monetary, financial institutions and market statistics[8].

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

Done at Frankfurt am Main, 12 February 2013.

[signed]

The President of the ECB

Mario DRAGHI

8 OJ L 341, 27.12.2007, p. 1.