



## **OPINION OF THE EUROPEAN CENTRAL BANK**

**of 31 January 2014**

**on the Magyar Nemzeti Bank**

**(CON/2014/8)**

### **Introduction and legal basis**

On 3 January 2014, the European Central Bank (ECB) received a request from the Hungarian Ministry of National Economy (hereinafter the ‘consulting authority’) for an opinion on a draft law amending the Law on the Magyar Nemzeti Bank<sup>1</sup> (hereinafter the ‘draft law on the Magyar Nemzeti Bank’), and a draft law on fiduciary asset managers and the rules governing their activities (hereinafter the ‘draft law on fiduciary asset management’).

On 9 January 2014, the ECB received an additional request for consultation from the consulting authority on a draft law amending several legal acts, including the Law on the Magyar Nemzeti Bank, as regards the rules applicable for the declaration of wealth by certain officials of the Magyar Nemzeti Bank (MNB) (hereinafter the ‘draft law on declaration of wealth’). As this consultation request also concerns an amendment of the Law on the Magyar Nemzeti Bank, the ECB has decided to merge the two consultation requests and adopt one opinion concerning all of the draft provisions sent for consultation.

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>2</sup>, as the draft laws concern rules applicable to the central bank. 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 Pursuant to the Law on the Magyar Nemzeti Bank, the Hungarian Financial Supervisory Authority (HFSA) was dissolved and its functions and responsibilities were transferred to the MNB on 1 October 2013. From this date, the MNB became the entity not only responsible for macro-prudential policy, but also for micro-prudential supervision of the entire financial market. As a result, the MNB has been exclusively authorised to take administrative decisions pertaining to the prudential supervision of the financial markets since that date. According to the explanatory

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<sup>1</sup> Law CXXXIX of 2013 on the Magyar Nemzeti Bank.

<sup>2</sup> OJ L 189, 3.7.1998, p. 42.

memorandum attached to the draft law amending the Law on the Magyar Nemzeti Bank, an amendment of the recently adopted Law on the Magyar Nemzeti Bank has become necessary with respect to: (a) improving the Law on the Magyar Nemzeti Bank based on practical experience recently gained from applying its provisions in connection with the MNB's financial supervisory tasks; (b) providing greater flexibility in the Financial Stability Council's (FSC) decision-making procedure; and (c) ensuring more efficient enforcement of the payment of the MNB's supervisory revenues. To this end, the draft law amending the Law on the Magyar Nemzeti Bank provides that the adoption of certain decisions under FSC administrative procedures may be delegated to competent MNB managers. It also provides for (a) the National Tax and Customs Administration of Hungary to collect unpaid supervisory fees and fines imposed by the MNB for and on behalf of the MNB; (b) the MNB's Governor or the person designated by him to become a member of the Board of the Public Procurement Authority; (c) the MNB to become the sole owner of the Credit Institution Liquidator Non-profit LLC; (d) the amendment of the provisions applicable to legal remedies against the MNB's administrative decisions; and (e) the possibility for the MNB to provide payment services for its employees, limited to cash payments, from their accounts managed by the MNB.

- 1.2 The draft law on fiduciary asset management regulates the legal status and activities of fiduciary asset managers. According to an amending proposal that is to be submitted to this draft law during the Hungarian parliamentary procedure, the MNB, as the Hungarian financial supervisory authority, is to be given authority to grant licences to entities carrying out such activities as well as to keep records with regard to such entities.
- 1.3 The draft law on the declaration of wealth defines sanctions against the MNB's Governor, the Deputy Governors, the other Members of the Monetary Council and the members of the Supervisory Board if: (a) they refuse or fail to submit their declaration of wealth by the given deadline; or (b) they intentionally include substantively false data in their declaration.

## 2. Specific Observations

- 2.1 The Law on the Magyar Nemzeti Bank has been subject to frequent changes over recent years, which also resulted in it having been recast twice since 2010. The currently applicable Law on the Magyar Nemzeti Bank only took effect on 1 October 2013, and it is already subject to change. The frequency of amendments to the Law on the Magyar Nemzeti Bank, which the ECB has criticised in its previous opinions<sup>3</sup> and in its Convergence Reports<sup>4</sup>, creates instability in the MNB's operations. A legal framework that provides a stable basis for a central bank to function is essential for central bank independence.

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<sup>3</sup> See, for example, Opinions CON/2007/14, CON2008/83, CON/2010/91, CON/2011/104, CON/2012/43 and CON/2013/56. All ECB opinions are published on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>4</sup> See Chapter 6.6 of the ECB's Convergence Report 2010, and Chapter 6.5 of the ECB's Convergence Report 2012.

2.2 The draft amendments summarised in section 1 do not warrant further observations from the ECB. At the same time, the ECB notes that there are still outstanding issues concerning the Law on the Magyar Nemzeti Bank, which should have been addressed in one of the numerous amendments described above. Therefore, the Hungarian legislator should take the opportunity that the current legislative process offers to address the issues that the ECB has already raised in relation to the Law on the Magyar Nemzeti Bank in its opinions and in the Convergence Reports referred to in paragraph 2.1, including the following issues:

- (a) Additional safeguards should be introduced into the Law on the Magyar Nemzeti Bank<sup>5</sup> in relation to the monetary financing prohibition<sup>6</sup>; the ECB, in its Convergence Report, also pointed out other provisions of the Law on the Magyar Nemzeti Bank that are incompatible with the provisions of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ‘Statute of the ESCB’).
- (b) There should be a provision covering: (i) additional checks and balances in the procedure for appointing Monetary Council members, and the rules providing for the smooth and continuous functioning of the Monetary Council in case of termination of office of the Governor; and (ii) changing the text of the oath taken by the MNB’s Governor and its Deputy Governors<sup>7</sup>.
- (c) There should be provisions: (i) as regards the prohibition of monetary financing in relation to the MNB’s general succession to the HFSA’s obligations and pending legal proceedings<sup>8</sup>; and (ii) the MNB defining the financial contribution of supervised entities<sup>9</sup>.

2.3 Article 157 of the Law on the Magyar Nemzeti Bank defines the rules with regard to the submission of declaration of wealth by MNB officials. The draft law on declaration of wealth, which further amends the Law on the Magyar Nemzeti Bank, provides that: (a) as long as the MNB’s Governor, Deputy Governors, members of the Monetary Council and members of the Supervisory Board do not comply with their obligation to submit a declaration of wealth, they will be prohibited from carrying out their duties and, as a consequence, they will not be entitled to receive their remuneration; and (b) a conflict of interest as defined in Article 152-156 of the Law on the Magyar Nemzeti Bank has to be formally established on their behalf, should they fail to fully comply with the obligations for submitting a declaration of wealth or if they submit substantively false data or facts.

2.4 Article 3 of the draft law on declaration of wealth inserts a new paragraph 1a in Article 157 of the Law on the Magyar Nemzeti Bank. The ECB has noted in its Opinion CON/2009/64<sup>10</sup> that

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<sup>5</sup> See Article 12(4) of the Law on the Magyar Nemzeti Bank, which has changed in the draft law without taking into account the ECB’s Convergence Report 2012.

<sup>6</sup> See pages 243 to 248 of the ECB’s Convergence report 2012.

<sup>7</sup> See paragraphs 3.2 and 3.3 and paragraph 4 of Opinion CON/2012/49.

<sup>8</sup> See paragraph 3.1.2 of Opinion CON/2013/56.

<sup>9</sup> See paragraph 3.1.5 of Opinion CON/2013/56.

<sup>10</sup> See paragraph 3.3.

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sanctions related to non-compliance with the obligation of submitting wealth declarations are not generally prohibited, provided that certain safeguards apply. The sanction provided for in Article 3 in effect allows the MNB's Governor, Deputy Governors and the members of the Monetary Council to be temporarily<sup>11</sup> removed from office for grounds other than those pursuant to Article 14.2 of the Statute of the ESCB. The ECB would like to underline that Governors and other members of a decision-making body of a national central bank (NCB) who are involved in the performance of ESCB-related tasks may not be dismissed for reasons other than those laid down in Article 14.2 of the Statute of the ESCB.

- 2.5 As regards the establishment of a possible conflict of interest, the insertion of a new paragraph 3 in Article 157 of the Law on the Magyar Nemzeti Bank is understood by the ECB to be used to oblige the Governor, the Deputy Governors, the members of the Monetary Council and the members of the Supervisory Board of the MNB to submit an accurate declaration of wealth. As regards this new paragraph 3, the ECB notes that the declaration of the conflict of interest should: (a) clarify whether this establishment involves only a presumption that a conflict of interest arises; (b) define the extent of the conflict of interest in such cases; and (c) provide for a legal remedy against such a decision. Nevertheless, the ECB notes that in order to dismiss the Governor and other members of any NCB's decision-making bodies who are involved in the performance of ESCB-related tasks, one of the two grounds for dismissal specified by Article 14.2 of the Statute of the ESCB have to apply.

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

Done at Frankfurt am Main, 31 January 2014.

[signed]

*The President of the ECB*

Mario DRAGHI

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<sup>11</sup> See the insertion of a new paragraph (1a) to Article 157 of the Law on MNB allowing for the suspension of the right of the members of the Monetary Council of the MNB to exercise their duties.