



OPINION OF THE EUROPEAN CENTRAL BANK

of 23 October 2015

**on the preliminary assessment of conditions related to the resolution of
credit institutions and investment firms
(CON/2015/38)**

Introduction and legal basis

On 22 September 2015 the European Central Bank (ECB) received a request from the Magyar Nemzeti Bank (MNB) for an opinion on the MNB's draft decree on the methodology for the preliminary assessment of the realisation of resolution objectives (hereinafter the 'draft decree').

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/EC¹, as the draft decree relates to 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 decree

- 1.1 In 2014 the Hungarian Parliament adopted Law XXXVII of 2014 related to the resolution of credit institutions and investment firms (hereinafter the 'Law on resolution')² in order to transpose Directive 2014/59/EU of the European Parliament and of the Council³ into Hungarian law, in relation to which the ECB adopted Opinion CON/2014/62⁴. The Law on resolution, inter alia, lays down the conditions under which MNB, acting as a resolution authority, may initiate a resolution action⁵. One condition is that resolution has to serve the public interest⁶. According to Article 17(5) of the Law on resolution⁷, a resolution action should be considered to be in the public interest if: (a) it is necessary for the achievement of, and is proportionate to one or more of the resolution objectives referred to in the Law on resolution, and (b) winding up of the institution under normal insolvency proceedings would not meet those resolution objectives to the same extent.

1 Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

2 Published in Magyar Közlöny 2014/98.

3 Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

4 All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

5 Article 17(1) of the Law on resolution transposing Article 32(1) of Directive 2014/59/EU.

6 Article 17(1) c) of the Law on resolution transposing Article 32(1)(c) of Directive 2014/59/EU.

7 This provision transposes Article 32(5) of Directive 2014/59/EU.

1.2 Based on the powers delegated to MNB's Governor by Article 145(2)(f) of the Law on resolution, the draft decree lays down specific criteria concerning each resolution objective listed in the Law on resolution, whereby the MNB examines the extent to which the concerned resolution objective can be better achieved through the winding up of an institution under normal insolvency proceedings or through resolution. The MNB assesses with equal weighing, both individually and collectively, the expected level of the realisation of the resolution objectives and the public interest in accordance with the nature and circumstances of the given case. The weight to be assigned to the public interest in this respect is not further specified in the draft decree. On this basis the MNB will decide whether the condition of acting in the public interest which is required to initiate a resolution, is met.

2. Observations

- 2.1 In accordance with Article 1(2) of Council Decision 98/415/EC, this Opinion only addresses issues that go beyond the mere transposition of Directive 2014/59/EU into Hungarian law. The ECB also stresses that this Opinion does not constitute an assessment of whether Hungary has effectively discharged its obligations to implement Directive 2014/59/EU.
- 2.2 The ECB welcomes that the MNB intends to enhance transparency and legal certainty for market participants by laying down criteria concerning resolution objectives, whereby the MNB examines the extent to which a resolution objective can be achieved through the winding up of an institution under normal insolvency proceedings and/or through resolution.
- 2.3 The consulting authority may wish to consider however whether the draft decree might unduly constrain the MNB's discretion as the resolution authority, beyond what is contemplated by Directive 2014/59/EU.

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

Done at Frankfurt am Main, 23 October 2015.

[signed]

The President of the ECB

Mario DRAGHI