EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 22 June 2011

on the Hungarian State Audit Office in relation to its audit of the Magyar Nemzeti Bank

(CON/2011/53)

Introduction and legal basis

On 19 May 2011 the European Central Bank (ECB) received a request from the Hungarian Ministry of Public Administration and Justice for an opinion on a draft law on the State Audit Office (SAO) (hereinafter the 'draft law').

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[1], 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 purpose of the draft law is to replace Law XXXVIII of 1989 on the SAO. According to the explanatory memorandum, Law XXXVIII of 1989 on the SAO must principally be amended to recodify provisions of the previous framework and include new elements that became necessary in the light of developments over the past few years.

The draft law retains the provision that the SAO audits the MNB's financial management and all central bank activities carried out according to the Law on the MNB[2] that do not constitute part of its primary tasks. Accordingly, the scope of SAO's audit covers whether the MNB operates in accordance with its statutes, the decisions adopted by its General Meeting and any applicable legislation.

2. The SAO's powers and central bank independence

2.1 The principle of central bank independence referred to in Article 130 of the Treaty and Article 7 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB') provides that the exercise of central bank powers and the performance of

1 OJ L 189, 3.7.1998, p. 42.

2 Law LVIII of 2001 on the MNB.

tasks and duties under the Treaty and the Statute of the ESCB are to be free from external instructions or government influence. In particular, when the SAO carries out a State audit of the MNB, the following central bank independence safeguards should apply: (a) the scope of the audit should be clearly defined in the legal framework; (b) the activities of MNB's independent external auditors should not be prejudiced; (c) the audit should comply with the prohibition on giving instructions to the MNB and its decision-making bodies; (d) the audit should not interfere with the MNB's ESCB-related tasks; (e) the audit should be performed on a non-political, independent and purely professional basis[3].

2.2 For reasons of certainty this provision should make it clear that the SAO's audit does not extend to the MNB's primary tasks, its main objective or any of its ESCB-related tasks. Therefore, the ECB welcomes the fact that Article 5(10) of the draft law already excludes the MNB's primary tasks from the scope of the SAO's audit.

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

Done at Frankfurt am Main, 22 June 2011.

[signed]

The President of the ECB

Jean-Claude TRICHET

3 See the ECB's Convergence Report 2010 p. 23, and paragraph 3.3 of Opinion CON/2011/9. See also Opinions CON/2006/4, CON/2002/22 and CON/2006/50. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.