EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 26 July 2013

on the new integrated Hungarian supervisory framework

(CON/2013/56)

Introduction and legal basis

On 7 June 2013, the European Central Bank (ECB) received a request from the Hungarian Ministry of National Economy (hereinafter the 'consulting authority') for an opinion on the draft law replacing the Law on the Magyar Nemzeti Bank[1] (hereinafter the 'draft law').

On 28 June 2013, the consulting authority informed the ECB about a further substantial amendment to the draft law (hereinafter referred to as the 'amendment to the draft law'), submitted during the Parliamentary procedure and of an amendment of the Hungarian Constitution to expand the Magyar Nemzeti Bank's (MNB) role as defined in the Constitution to provide for the new institutional framework of financial supervision that will be created by 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 and sixth indents 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[2], as the draft law concerns rules applicable to the MNB, and contains 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

1.1 The draft law changes the MNB's competence and institutional framework by establishing a legal framework for integrated supervision of the Hungarian financial market. Currently, the Hungarian Financial Supervisory Authority (HFSA) supervises credit institutions, capital markets, insurance markets and financial funds.

1.2 Pursuant to the explanatory memorandum attached to the draft law (hereinafter referred to as the 'explanatory memorandum'), the new provisions are expected to strengthen the macro-prudential

1 Law CCVIII of 2011.

2 OJ L 189, 3.7.1998, p. 42.

framework in Hungary, to promote the coordination of macro- and micro-prudential policies, and to significantly contribute to ensuring financial stability.

1.3 Pursuant to the draft law, the HFSA will be dissolved and its functions and responsibilities will be transferred to the MNB on 1 October 2013. In the future, the MNB's responsibilities will also include financial market supervision. In addition, the draft law provides that the MNB will furthermore be entrusted with consumer protection and conducting the alternative dispute resolution procedure currently operated by the HFSA for disputes between consumers and financial service providers or entities participating in the financial market.

1.4 The amendment to the draft law makes the MNB the general legal successor to all of the HFSA's rights and obligations.

1.5 The draft law names the MNB as the entity responsible for macro-prudential policy and micro-prudential supervision. Pursuant to the draft law, the new macro-prudential instruments available to the MNB will be: (a) preventing and mitigating excessive credit growth by defining rules applicable to the loan-to-value and the payment-to-income ratios (for loan contracts with private individuals), as well as to the risk weights for residential and commercial real estate lending; (b) regulating the countercyclical capital buffer; (c) preventing and mitigating systemic risks by defining rules applicable to the limit of maturity mismatches between assets and liabilities, limiting FX mismatches between assets and liabilities, and short term liquidity requirements; and (d) setting up a systemic risk buffer to reduce the probability of default by systemically important financial institutions.

1.6 After 1 October 2013, the MNB will be exclusively authorised to take administrative decisions pertaining to the prudential supervision of the financial markets.

1.7 The draft law also states that the MNB will be the resolution authority in Hungary, once the applicable domestic resolution regime is adopted. As noted in the explanatory memorandum, the Hungarian resolution framework is still under development, and the government wants to ensure that the framework provides for adequate separation between the MNB's supervisory duties and its anticipated resolution functions.

1.8 As acknowledged by the consulting authority and the MNB, significant organisational restructuring will be required to transfer these new functions to the MNB. While the Monetary Council remains the MNB's main decision-making body, responsible not only for strategic decisions in regard to the tasks relating to its membership in the European System of Central Banks (ESCB), but also for supervisory and macro-prudential functions, the draft law provides for separate operational decision-making by establishing a new body of the MNB, the Financial Stability Council (FSC). This body will be responsible for macro-prudential implementing the Monetary Council's strategic decisions related to the MNB's supervisory and macro-prudential tasks, as well as for taking the operational decisions related to these tasks. The Executive Board will remain the decision-making body responsible for the direction of the MNB's operations.

1.9 Hungary intends to comply with the Recommendation of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities (ESRB/2011/3)[3] by adopting the draft law, although the actual implementation date will take place well after the reporting deadline of 30 June 2013 prescribed by the European Systemic Risk Board (ESRB).

2. General observations

In the context of Article 127(5) of the Treaty, the ECB has welcomed on several occasions institutional frameworks established in Member States that recognise the essential role of central banks in promoting the safety and soundness of financial institutions and the stability of the financial system as a whole. Against this background, the ECB welcomes the integration of the HFSA into the MNB, as this integrated institutional framework will improve the MNB's ability to safeguard financial stability and prevent or mitigate systemic risks. In Member States with a relatively small financial market, such as Hungary, there are strong arguments for concentrating supervisory and macro-prudential responsibilities within a single authority[4].

The ECB considers entrusting the MNB with supervisory tasks as compatible with its ESCB tasks. Moreover, given the Hungarian banking sector's structural connection to that of the euro area, the ECB encourages the Hungarian national legislator to follow developments in European Union legislation closely as regards the planned Banking Union.

However, the ECB notes that the assumption of new tasks by a national central bank (NCB) in the ESCB should generally not infringe upon the NCB's independent execution of tasks within the ESCB framework and the MNB's existing tasks[5]. Accordingly, the MNB's performance of macro-prudential tasks should not affect: (a) the MNB's functional and financial independence; or (b) the MNB's performance of its ESCB-related tasks under the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the 'Statute of the ESCB')[6]. This should be given due consideration when formulating the provisions applicable to the HFSA's integration into the MNB.

The ECB also notes that Article 4(12) of the draft law does not specify that the MNB's new tasks fall under its exclusive competence. This is inconsistent with the provisions of Articles 4(8) and (9), which, in the ECB's view, are drafted to confer exclusive tasks on the MNB.

3 OJ C 41, 14.2.2012, p. 1.
4 See also paragraph 4 of Opinion CON/2005/39. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.
5 Opinion CON/2003/19.
6 See paragraph 2.3 of Opinion CON/2013/30.

3. Specific observations

3.1 Transfer of new responsibilities to the MNB and the MNB's new governance structure

3.1.1 *Frequent changes to the legal framework of the MNB; incompatibility with the Treaties*

The Law on the MNB has been subject to frequent changes over recent years. The currently applicable Law on the MNB took effect on 1 January 2012, and it has already been amended on several occasions. Moreover, the draft law will be the second recast of the Law on the MNB since 2010. The frequency of amendments to the Law on the MNB, which the ECB has criticised already in its previous Opinions[7] and in its Convergence Reports[8], creates instability in the MNB's operations. A legal framework that provides a stable basis for the central bank's functioning is essential for central bank independence.

The Hungarian legislator has decided to address the latest changes to the MNB's legal framework in respect of its new tasks by preparing a new law governing its legal status. Therefore a number of outstanding issues that have been raised in previous ECB opinions[9] and Convergence Reports should be addressed as a part of the current legislative process. The Law on the MNB should be compatible with the Treaties and strengthen the MNB's institutional framework.

In particular, the views expressed in paragraphs 3.2, 3.3 and 4 of Opinion CON/2012/49 continue to apply as regards additional checks and balances in the procedure for appointing Monetary Council members, the rules on dismissal of Monetary Council members, including the Governor and the Deputy Governors, and the text of the oath taken by the MNB's Governor and the Deputy Governors.

In addition, the ECB's Convergence Report of May 2012[10] recommended introducing additional safeguards to the Law on the MNB[11] (Articles 35(1) and 36 of the draft law) in relation to the monetary financing prohibition and the requirements for the MNB's legal integration into the Eurosystem.

Legal integration of the NCBs into the Eurosystem requires that national legislation be adapted to allow for the performance of Eurosystem-related tasks and compliance with the ECB's decisions, once the Member State concerned has adopted the euro. The ECB's 2012 Convergence Report identifies several Hungarian legislative provisions that are incompatible with Treaty requirements, in particular provisions included in the Law on the MNB relating to the economic policy objectives, monetary policy, collection of statistics, official foreign reserves management, payment systems, issue of banknotes, appointment of auditors, financial reporting, exchange rate policy, international cooperation and the recognition of the ECB's power to impose sanctions. The ECB draws the Hungarian authorities' attention to the fact that, for compliance with Article 131 of the Treaty,

7 See, for example, Opinions CON/2007/14, CON2008/83, CON/2010/91, CON/2011/104, CON/2012/43.
8 See Chapter 6.6 of the ECB's Convergence Report 2010, and Chapter 6.5 of the ECB's Convergence Report 2012.
9 See Opinions CON/2011/104, CON/2011/106, CON/2012/43, and CON/2012/49.
10 See pages 243 to 248.
11 See Article 12(4) of the Law on the MNB, which has changed in the draft law without taking into account the ECB's Convergence Report 2012.

which requires that Hungarian legislation be compatible with the Treaty and the Statute of the ESCB[12], relevant Hungarian legislation had to be adjusted by the date of Hungarian accession to the Union. Hence, adjustments necessary to ensure full integration of the MNB into the Eurosystem should also be adopted as soon as possible, while they must enter into force on the date Hungary adopts the euro.

3.1.2 *Central bank independence and the monetary financing prohibition*

The provisions under which an NCB becomes the legal successor to any liabilities of a specific supervisory authority may raise issues in regard to financial independence and compliance with the prohibition of monetary financing laid down in Article 123(1) of the Treaty[13], read in conjunction with Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b (1) of the Treaty[14].

The principle of central bank independence requires Member States to ensure that NCBs have sufficient financial resources to perform ESCB or Eurosystem-related tasks as well as their own national tasks[15]. The tasks transferred to the MNB should not affect its ability to carry out its ESCB-related tasks from an operational and financial point of view. In this respect, the new MNB functions should be performed in a manner that is fully compatible with the MNB's institutional and financial independence and consequently should not impede the proper performance of its ESCB-related tasks.

3.1.3 *Devolution of the HFSA's assets to the MNB*

The draft law provides for the transfer of assets managed by the HFSA to the MNB on 1 October 2013[16]. The ECB notes that these assets include all property, such as shares in business undertakings and account balances, but it does not include real property of the HFSA which is owned by the Hungarian State, for which the MNB will only acquire property management rights. The balance of the HFSA's accounts will be transferred to the MNB for use at the MNB's sole discretion.

3.1.4 *General succession of the HFSA's and Financial Conciliation Board's obligations and pending legal proceedings*

The amendment to the draft law provides that the MNB will become a general legal successor of all HFSA obligations, including, *inter alia*, its contractual relationships, pending procurement procedures, out-of-court redress procedures, tax-related administrative procedures as well as any other type of legal procedure. The amendment to the draft law provides further details that all rights and liabilities of the HFSA resulting from pending administrative legal procedures will devolve to

12 See paragraph 2.3 of Opinion CON/2013/30.
13 See paragraph 3.2.3 of Opinion CON/2010/33.
14 OJ L 332, 31.12.1993, p. 1.
15 See the ECB' Convergence Reports and paragraph 3. of Opinion CON/2011/69 and paragraph 2.3 of Opinion CON/2012/52.
16 See Articles 174 and 177 of the draft law.

the MNB[17]. As a consequence, any payment obligation from a legal relationship or a requirement to pay compensation in regard to any judgment handed down by Hungarian courts granting compensation to an individual or entity challenging the HFSA's prior decisions will be borne by the MNB, without subsequent recourse to the Hungarian State for reimbursement. This raises issues of financial independence and compliance with the prohibition on monetary financing laid down in Article 123 of the Treaty[18]. In order for the MNB to be able to perform its new supervisory tasks without adversely affecting its performance of other existing tasks, sufficient resources should be made available to it, and the HFSA liabilities, including those related to any HFSA's supervisory activities undertaken prior to the effective date of the transfer of responsibilities to the MNB should not be transferred to the MNB. In addition, the MNB should not have to bear any financial costs or liabilities related to any HFSA activities undertaken prior to the effective date of transfer of responsibilities to the MNB[19].

The ECB would expect the assignment of the HFSA's tasks and powers to the MNB to be accompanied by measures that fully insulate the MNB from all financial obligations resulting from any HSFA activities and contractual relationships in the period prior to the transfer of tasks. This should include, for example, the cost of legal representation in any pending or future legal proceedings in relation to the HFSA, as well as all financial obligations arising out of other legal relationships, including employment relations between any new MNB staff member and the HFSA[20]. It should also include any costs related to the operations of the HFSA's Financial Conciliation Board[21].

In order to comply with the monetary financing prohibition, the MNB must be insulated from all financial obligations resulting from the HFSA's prior activities or legal relationships. Failure to amend the draft law along these lines would make the proposed arrangements in the draft law and the amendment to the draft law incompatible with Articles 123 and 130 of the Treaty.

3.1.5 *Financial contributions of supervised entities*

The amount of supervisory fees is defined in the respective law applicable to the supervised entities. The procedural rules and methodology for payment of financial contributions to the HFSA's supervisory tasks are currently defined in decrees adopted by the President of the HFSA. Up until now, financial supervision in Hungary has been fully funded by market participants and this financing system is to be maintained after the reform, insofar as the draft law provides for financing the supervisory tasks transferred to the MNB by contributions from supervised entities

17 See Article 175 of the draft law.

18 See also paragraph 15 of Opinion CON/2004/31, paragraph 8 of Opinion CON/2005/39, paragraph 3.2.3 of Opinion CON/2011/46 and paragraph 4.2(d) of Opinion CON/2008/16.

19 See, for example, paragraph 3.2 of Opinion CON/2010/33, paragraphs 3.1 to 3.4 of Opinion CON/2011/5, paragraph 2.2.5 of Opinion CON/2010/7.

20 See, for example, paragraph 3.2 of Opinion CON/2010/33, paragraphs 3.1 to 3.4 of Opinion CON/2011/5, paragraph 2.2.5 of Opinion CON/2010/7.

21 The HFSA Financial Conciliation Board is an independent body without legal personality. The HFSA provides funding for its operation.

and funds transferred from the HFSA[22]. The ECB understands that the concrete terms applicable for financing the HFSA's supervisory tasks that are defined in decrees adopted by the HFSA's President will continue to apply in order to finance the conduct of these tasks carried out by the MNB after 1 October 2013.

In order to ensure the MNB's financial independence, the performance of its new supervisory functions should be financed by contributions received from supervised entities. This should cover all the costs involved with the transfer and fulfilment of the MNB's new tasks. For this reason, in the future the MNB should be involved in determining the amount of financial contribution payable by supervised entities, and furthermore, the methods for calculating such contributions should be defined independently by the MNB, taking into account its actual costs.

Moreover, the MNB's operational costs for its new supervisory tasks should be separately identified in its accounting books, and monitored by the MNB's internal and external auditors.

3.1.6 *The MNB's right to hire and retain qualified staff*

As pointed out in previous ECB opinions[23], when allocating specific non-ESCB related tasks to an NCB, e.g. tasks related to financial supervision or consumer protection, an adequate amount of human and financial resources must also be allocated for these tasks, which should be carried out in a manner which will not affect the NCB's operational capacity to perform its ESCB-related tasks[24]. The draft law expressly provides that, on the effective date, the HFSA will be dissolved, all employment relationships established by the HFSA will cease to exist[25], i.e. no employees of the HFSA will be automatically transferred to be employed by the MNB.

The amendment to the draft law however provides that all employees of the HFSA will become employees of the MNB on 1 October 2013. This provision breaches the MNB's right to autonomy in staff matters, as it does not enable the central bank to make an exclusive and independent decision on whether to employ any former HFSA staff members[26].

At the same time, in order to provide for the smooth transfer of responsibilities and tasks from the HFSA to the MNB, the MNB should be allowed sufficient time from the entry into force of the draft law to recruit specialised staff of its own choice, where appropriate, for the proper implementation of its new responsibilities.

In line with paragraph 3.1.4 above, it should be ensured that, as regards staff recruited according to the principle of autonomy in staff matters, the MNB will not bear any financial obligations arising from employment relations that any new staff recruited by the MNB may have had with the HFSA in the past.

22 See paragraph 3.2.5 of Opinion CON/2010/33.

23 See, for example paragraph 6.3 of Opinion CON/2006/15, paragraph 3.2.4 of Opinion CON/2010/33 and paragraph 3.5 of Opinion CON/2011/5.

24 See, for example, paragraph 3 of Opinion CON/2007/8 and paragraph 3.3 of Opinion CON/2011/76.

25 Article 180 of the draft law.

26 See paragraph 3.2.4 of Opinion CON/2010/33.

3.1.7 *The FSC*

The draft law establishes a new body within the MNB that will take decisions as regards macro-prudential policy, the supervision of the financial market as well as decisions related to the MNB's new role as a resolution authority, within the strategic framework set by the Monetary Council. The Monetary Council will be entrusted with new tasks in this respect, i.e. to determine the strategic framework in relation to the MNB's macro- and micro-prudential tasks and in relation to the tasks as resolution authority. The Executive Board will implement the decisions of the FSC through the Governor and in particular through the Governor's decrees.

The draft law provides for the following composition of the Financial Stability Council: the MNB's Governor as chair, the Deputy Governors supervising the fundamental tasks of the MNB related to macro-prudential policy and financial supervision, and managers appointed by the Governor. A representative of the Minister for National Economy may participate in meetings and additional experts may also attend the meetings of the FSC upon invitation from the MNB Governor. The ECB welcomes that the right of external participants to engage in discussions[27] does not confer voting rights to these participants. In addition, this right should not be used to constrain the independence of the FSC members.

3.1.8 *Legislation adopted by the HFSA President*

The Law on the HFSA currently gives the HFSA President the power to adopt secondary legislation to regulate matters falling within his competence. For reasons of legal certainty, this legislation should continue to apply after the transfer of supervisory tasks from the HFSA to the MNB. The ECB understands that there is no provision in the draft law that would prevent the MNB from repealing the decrees adopted by theHFSA President and replacing them with decrees adopted independently by the MNB Governor in regard to the MNB's new tasks.

The ECB expects to be consulted on any draft national legislation prepared by the MNB Governor that falls within the ECB's competence, in accordance with the provisions of Council Decision 98/415/EC.

3.1.9 *The MNB's cooperation with other bodies*

The draft law provides[28] that, as regards its supervisory tasks described under Article 4(9), the MNB will cooperate with international organisations to the extent detailed in bilateral agreements. The MNB will provide international organisations with information, if Hungarian legislation allows for the transfer of information to such organisations. Contrary to a recent amendment[29] to the Law on the HFSA, Article 139 of the draft law does not list the ECB and the ESCB amongst the organisations with which the MNB cooperates. Furthermore, the draft law should also be amended to reflect the legal obligation to cooperate with the ESCB and the ECB in the field of

27 Article 13(8) of the draft law.

28 See Article 42(2) of the draft law.

29 See the amendment to Article 11(1) of the Law on the HFSA incorporated in Law XCVIII of 2013 on the amendment of financial-related legal acts.

statistics. Such cooperation is provided for in the first indent of Article 46.2 of the Statute of the ESCB. Although Regulations adopted under Article 34.1 of the Statute of the ESCB in the field of statistics do not confer any rights or impose any obligations on Member States that have not adopted the euro, Article 5 of the Statute of the ESCB (Collection of statistical information) applies to all Member States, whether or not they have adopted the euro. Furthermore, Article 4 of Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank[30], that implements Article 5.4 of the Statute of the ESCB, requires all Member States to '… organise themselves in the field of statistics and … fully cooperate with the ESCB in order to ensure the fulfilment of the obligations arising out of Article 5 of the Statute'. Accordingly, Member States whose currency is not the euro are under an obligation to design and implement, at a national level, all measures they consider appropriate to collect the statistical information needed to fulfil the ECB's statistical reporting requirements and to make timely preparations in the field of statistics in order for them to become participating Member States.

3.1.10 *Obligation to inform the Government about the adoption of decrees*

Performance by the MNB of macro-prudential tasks should not affect: (a) the MNB's functional, institutional and financial independence; or (b) the MNB's performance of its ESCB tasks under the Treaty and the Statute of the ESCB.

Article 169(4) of the draft law requires the MNB's Governor to inform the Government with respect to a decree[31] that restricts certain market activities, prior to adopting that decree. The MNB should also give reasons for the adoption. The draft law does not provide a reason why MNB's Governor has to inform the Government in advance, and this raises concerns as to possible undue governmental influence on the adoption of such decrees. This would constitute a breach of the MNB's independence in performing its macro-prudential tasks, which should be ensured in line with Article 1(2) of the draft law.

3.1.11 *The proposed timeline for the MNB to assume its new tasks*

Pursuant to the draft law, the MNB is to be fully functional as regards its new supervisory tasks on 1 October 2013[32]. Taking into consideration that the planned adoption of the draft law will take place in late September 2013, the draft law does not provide for a sufficient period of time between the adoption of the draft law and the actual dissolution of the HFSA, which is also the commencement date for the MNB to perform its new tasks[33].

As acknowledged by the consulting authority and the MNB, taking over supervision is a significantly complex task, requiring serious organisational restructuring on behalf of the MNB, particularly with regard to the establishment of applicable internal regulations, the provision of the

30 OJ L 318, 27.11.1998, p. 8.
31 See the decree defined in Article 169(1) of the draft law.
32 Article 172 of the draft law.
33 See also paragraph 3.2.5 of Opinion CON/2011/46 and paragraph 3.2.6 of Opinion CON/2010/33.

human and financial resources necessary to carry out the new tasks, and the taking up of the practical activities in supervising the financial markets. However, the time frame available between the adoption of the draft law and its entry into force may not make it feasible for the MNB to prepare for its new tasks and ensure the continuity of efficient supervision of the entire financial market from 1 October 2013. Continuity of supervision is necessary to ensure financial stability and it is essential that there is no lack of supervision for any time period due to the reorganisation of the supervisory structure. The ECB therefore suggests that the consulting authority sets a date after 1 October 2013 for the MNB to assume its new tasks.

3.2 Performance of specific functions by MNB

3.2.1 *The macro-prudential aspects of the MNB's new tasks*

The ECB welcomes that the draft law entrusts the MNB with fundamental tasks related to the exploration and management of systemic risks. The ECB supports the design of effective macro-prudential policy frameworks within Member States, in line with the guiding principles set out in Recommendation ESRB/2011/3. Moreover, the ECB considers that the ECB and NCBs should play a leading role in macro-prudential oversight, given their expertise and existing responsibilities in the area of financial stability[34].

Concerning the envisaged measures to reduce the probability of bankruptcy of systemically important institutions, Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms[35] includes separate provisions on capital charges for 'global and other systemically important institutions'[36] as well as for a 'systemic risk buffer'[37]. In order to improve clarity and ensure legal certainty, the ECB proposes that the provisions set out in Article 34 of the draft law are brought fully in line with the relevant provisions of Directive 2013/36/EU, clearly separating these two types of instruments.

Furthermore, the Hungarian legislator is recommended to consider adding additional instruments in the draft law that are at the disposal of national macro-prudential authorities pursuant to Directive 2013/36/EU.

The above observations are without prejudice to the conclusions of the follow-up assessment of Recommendation ESRB/2011/3, which the ESRB will prepare in accordance with Article 17 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board[38].

34 See paragraph 2.1 of Opinion CON/2013/30.
35 OJ L 176, 27.6.2013, p. 338.
36 See Article 131 of Directive 2013/36/EU.
37 See Article 133 of Directive 2013/36/EU.
38 OJ L 331, 15.12.2010, p. 1.

In this context, the ECB first notes that Article 4(7) of the draft law provides not only for new tasks, but also for a new objective for the MNB to improve the resilience of the financial intermediation system and to ensure its sustainable contribution to economic growth through its macro-prudential policy. In line with Article 127(1) of the Treaty and Article 2 of the Statute of the ESCB, this objective should not prejudice the primary objective of price stability defined in Article 3(1) of the draft law. The draft law should be adapted to reflect this.

Moreover, in line with Article 127(1) of the Treaty and Article 2 of the Statute of the ESCB, the MNB's secondary objectives should not prejudice the ESCB's primary and secondary objectives. This is required for full legal integration of the MNB into the Eurosystem, and therefore a legislative provision to this effect will need to enter into force on the date on which Hungary adopts the euro.[39]

3.2.2 *The MNB's resolution authority function*

The draft law provides that the MNB will be designated as the resolution authority.[40] In this respect the ECB understands that the detailed rules are to be defined in separate legislation. Appropriate resources will have to be made available to ensure the MNB's performance of this new task.

As legislation detailing this new function of the MNB has not yet been prepared, the ECB is not in a position to assess the MNB's ability to take on the role of a resolution authority. To ensure legal certainty, national legislation providing for this new function of the MNB should be adopted in a timely manner.

Furthermore, any performance by the MNB of tasks as resolution authority should not affect: (a) the MNB's functional and financial independence; or (b) the MNB's performance of its ESCB-related tasks under the Treaty and the Statute of the ESCB.

Moreover, the ECB notes that draft national legislation pertaining to NCB tasks falls within the ECB's competence and is therefore subject to the consultation requirement in accordance with the provisions of Council Decision 98/145/EC.

3.2.3 *The MNB's new consumer protection function*

As previously noted by the ECB[41], consumer protection is not included in the tasks of NCBs specified in the Treaty and the Statute of the ESCB. However, as pointed out on previous occasions[42], the ECB does not consider that this task would interfere with the ESCB's objectives and tasks. Pursuant to the last sentence of Article 14.4 of the Statute of the ESCB, this task would have to be the MNB's responsibility, for which it would be liable. It would not be regarded as being part of the ESCB's functions. The ECB understands that this task has been allocated to the MNB[43] due to its overall supervisory responsibility for the entire financial market. The task may

39 See ECB's Convergence Report of May 2012, country summary, p. 57-58.
40 Article 4(8) of the draft law.
41 See, for example, paragraph 3.4 of Opinion CON/2011/46 and paragraph 2.4 of Opinion CON/2012/52.
42 See, for example, Opinions CON/2006/47, CON/2006/38, CON/2007/8 and CON/2007/29.
43 See Articles 80 to 90 of the draft law.

supplement MNB's supervisory powers and thus contribute to the soundness of the financial market and preserve confidence in the market.

The allocation of new powers to the MNB aims to ensure the transparency of financial services transactions and products offered by entities subject to its supervision. This allocation could improve the clarity and efficiency of the national regulatory framework while ensuring adequate consumer protection and a level playing field. Prudential supervision and investor/consumer protection are intended to safeguard the soundness of the financial market and preserve confidence in the marketplace.

However, as previously stated by the ECB in relation to other NCBs, it is important to ensure that prudential supervision and investor/consumer protection are adequately and equally emphasised and that appropriate resources are available to ensure their performance[44]. When granting these additional powers to the MNB, care must be taken to ensure that the MNB's operational capacity to carry out ESCB-related tasks will not be affected from an operational as well as financial point of view, due to any additional tasks introduced by the draft law.

3.2.4 *The MNB's responsibilities in the area of EMIR, SEPA and the supervision of negotiable vouchers*

The ECB has recently been consulted by the Hungarian authorities[45] as regards the amendment of the current Law on the MNB that needed to take place in order to implement Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR)[46], as well as with Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro (SEPA)[47].

This latest amendment of the Law on the MNB also introduced provisions as regards the supervision of the activities and enterprises that issue and redeem negotiable vouchers not constituting legal tender. Consequently, the Hungarian legislators should consider including in the draft law also provisions on the MNB's role as the competent authority for the above EMIR and SEPA provisions, including for registering and supervising entities issuing such negotiable vouchers.

3.2.5 *Provisions of the draft law on banknotes and coins*

Article 4(2) and Articles 23 to 26 of the draft law establishing the MNB's exclusive right to issue banknotes and coins do not recognise the Council's and the ECB's powers in this field.

In addition, the draft law should indicate whether the references to 'banknotes and coins', 'Hungarian and foreign means of payment' and 'legal tender in circulation' also cover euro banknotes and coins. In general, these references should mainly encompass Hungarian currency with legal tender status. If foreign means of payment are also meant to cover euro banknotes and

44 See Opinions CON/2006/47, CON/2006/38, CON/2007/8 and CON/2007/29.
45 See Opinion CON/2013/40
46 OJ L 201, 27.7.2012, p. 1, Articles 14(1), 15(1), 18, 20, ~~20~~21(1), 35, 41(1), 49(1), 54(1).
47 OJ L 94, 30.3.2012, p. 22, Article 10.

coins, the ECB suggests specifying in the draft law that the relevant provisions of Union law apply and no national legislation can substitute for them. For legal certainty and consistency reasons, all of the above references should be defined.

Article 23(9) of the draft law would benefit from an amendment clarifying that applicants seeking exchange of banknotes denominated in Hungarian currency, which are damaged due to the activation of security devices must prove that they are the owners or otherwise authorised applicants acting in good faith, who have been victims of attempted or actual criminal activity leading to damage to these banknotes. This amendment would avoid the risk of allowing the actual criminal to request the MNB to exchange such damaged banknotes by simply presenting an official document certifying the cause of the damage, as required under Article 23(9) of the draft law.

To ensure a level playing field for means of payment denominated in all currencies, the phrase 'including means of payment denominated in euro' should be inserted into Article 24(4) and (5) of the draft law after the words 'foreign means of payment'. This insertion is necessary as it is understood that the reference to 'foreign means of payment' does not always include euro banknotes and coins in its scope[48].

Finally, the ECB recommends modifying Article 26(2) of the draft law to clarify that reproductions of euro banknotes and coins, including medals and tokens similar to euro coins, must comply with the relevant requirements of Union law, instead of referring to alterative reproduction requirements laid down by the MNB's Governor.

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

Done at Frankfurt am Main, 26 July 2013.

[signed]

The President of the ECB

Mario DRAGHI

48 See for instance Article 24(3) of the draft law.