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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 8 May 2009

on alignments of the Magyar Nemzeti Bank's legal framework to new administrative rules

(CON/2009/44)

Introduction and legal basis

On 22 April 2009 the European Central Bank (ECB) received a request from the Hungarian Ministry of Finance for an opinion on a draft law[1] (hereinafter the 'draft law') amending Law LVIII of 2001 on the Magyar Nemzeti Bank[2] (hereinafter the 'Law on the MNB').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community 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[3], 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

On 15 December 2008 the Hungarian Parliament accepted certain amendments to the Law on the general rules for administrative proceedings and services[4] ('Law on administrative proceedings') with a view to making administrative proceedings smoother, faster and more efficient. Since the Law on administrative proceedings is a general code, the relevant legal acts need to be amended and harmonised with the new rules under the draft law. Concerning the Law on the MNB the draft law aims to:

(a) align the MNB's legal framework with the Law on administrative proceedings,

(b) create uniform rules for the MNB's administrative proceedings,

(c) establish the MNB's right to impose sanctions,

(d) authorise the MNB's Governor to establish the fees payable for the MNB's proceedings.

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1 Draft law T/9354 on the amendment of several acts in connection with the entry into force of Law CXI of 2009 amending Law CXL of 2004 on the general rules for administrative proceedings and services and with the transposition of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006, p. 36.

2 *Magyar Közlöny 2001. VII. 5.*

3 OJ L 189, 3.7.1998, p. 42.

4 *Magyar Közlöny 2004. XII. 28.*

2. General observations

The ECB has no objections to the Law on administrative proceedings in the matters and subject to the particular rules specified in the Law on the MNB, provided it does not jeopardise the MNB's independence. The ECB understands that the draft law does not affect the MNB's ability to adopt monetary policy decisions and that the obligation of professional secrecy under Article 38.1 of the Statute of the European System of Central Banks and of the European Central Bank is fully respected.

3. Specific observations

Sanctions of the MNB

3.1 According to the proposed Article 29/C and 29/D to be added to the Law on the MNB, the MNB may take the measures prescribed in the Law on administrative proceedings and impose fines (hereinafter referred to collectively as 'sanctions') for any infringement of the legislation listed in the proposed new Article 29(1) or of the MNB's administrative decisions by any inspected organisations or persons on behalf of such organisations. The ECB understands that the new sanctioning powers apply in the following areas: payment and settlement systems, including securities settlement systems; cash processing; statistical compliance under the central bank information system; compliance with minimum reserve requirements; prevention of counterfeiting of legal tender and of money laundering. The ECB welcomes the fact that once the draft law is enacted the MNB will be authorised to impose sanctions directly. The ECB also notes that any widening of the MNB's powers has to be supported by providing it with sufficient human and financial resources, both in terms of quantity and quality, to carry out its new tasks without affecting its capacity to carry out its tasks related with the European System of Central Banks.

Fee regime

3.2 According to the proposed subparagraph i) to be inserted into Article 60(1) of the Law on the MNB, the Governor will be authorised - in contrast to under the general rules - to regulate alone in a decree the amount of the administrative service fee charged for any MNB proceedings requested (with certain exceptions) and the rules relating to the payment of such fees. The ECB welcomes this new power.

Miscellaneous

3.3 The ECB understands that the remaining rules of the draft law amending other various legal acts do not affect the MNB's independence.

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

Done at Frankfurt am Main, 8 May 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET