EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 12 April 2011

on the draft Constitution with regard to the Magyar Nemzeti Bank

(CON/2011/33)

Introduction and legal basis

On 16 March and 23 March 2011 the European Central Bank (ECB) received a request from the Hungarian Ministry of Public Administration and Justice and the Hungarian Ministry of the National Economy respectively for an opinion on the draft Constitution (hereinafter the 'draft Constitution'). On 4 April 2011, the Hungarian Ministry of Public Administration requested the ECB's opinion also on two amending proposals that had been submitted to the Parliament for adoption before 11 April 2011.

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 Constitution 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 Constitution

The purpose of the draft Constitution is to replace Law XX of 1949 on the Constitution of the Republic of Hungary ('Law XX of 1949'). According to the explanatory memorandum, Law XX of 1949 needed to be replaced mainly due to its structure and wording that has become obsolete. This is also confirmed by the large number of Constitutional Court decisions and the 34 amendments introduced since 1989.

The draft Constitution[2] retains the provision that the MNB is the central bank of Hungary and is responsible for monetary policy in the manner specified by law. It also overall retains the appointment procedure for the MNB's Governor, except that the term is extended from six to nine years and the

1 OJ L 189, 3.7.1998, p. 42.

2 Article 41.

MNB's Deputy Governors will be appointed by the MNB's Governor[3]. The Governor will also be a Fiscal Council member. The MNB's reporting obligations and its Governor's legislative powers will remain unchanged.

The two amending proposals foresee that (i) the Law on the Magyar Nemzeti Bank will be a qualified legal act[4] (hereinafter the 'first amending proposal')[5] and (ii) the appointment and term of office of the MNB's Governor and the Deputy Governors will be amended in the draft Constitution, and the Law on the MNB and the Law on the supervision of the financial intermediary system will be qualified legal acts (hereinafter the 'second amending proposal')[6].

2. Compatibility of the Constitution with the Treaties and the Statute of the European System of Central Banks and of the European Central Bank

2.1 The ECB has assessed the compatibility of Hungarian legislation with the requirements of Union law relating to central bank independence, monetary financing and also the MNB's participation in the ESCB and, prospectively, in the Eurosystem in its Convergence Reports since 2004, including Law XX of 1949. In the latest 2010 Convergence Report, the ECB found that Article 32/D of Law XX of 1949, which establishes the MNB's powers in the field of monetary policy, does not recognise the ECB's powers in this field. The ECB notes that the relevant provision in the draft Constitution remains the same as in Law XX of 1949. Hungary is a Member State with a derogation and must therefore comply with all adaptation requirements under the Treaty. The Hungarian authorities should, therefore, take this opportunity to make the necessary adjustments to ensure the MNB's full integration into the Eurosystem which must enter into force on Hungary's adoption of the euro.

2.2. The ECB would like to refer to its previous stance observing that Union law does not prescribe the manner in which national legislation should be adapted to achieve compatibility with the relevant requirements under the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'). This may be achieved by referring to the Treaty and the Statute of the ESCB, by incorporating provisions thereof and referring to their source, by deleting any incompatibility, or by using a combination of these methods[7]. Depending on the national legislator's choice, and in line with the hierarchy of national legislation, such changes may be introduced in constitutional provisions, ordinary legislation, or both.

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3 According to the second amending proposal, the current appointment procedure also remains overall unchanged: Hungary's President appoints the Governor and the Deputy Governors for six years, except that the Constitution will no longer provide for the Prime Minister's right to recommend a candidate.

4 A qualified or 'organic' legal act could be adopted or amended only by a two-thirds majoriry vote.

5 Amending proposal T/2627/55.

6 Amending proposal T/2627/129.

7 Convergence Report May 2010, Section 2.2.2.2 p. 17. CON/2011/9, paragraph 2.2. All ECB documents referred to are available on the ECB's website at www.ecb.europa.eu.

3. Relationship between the draft Constitution and the Law on the Magyar Nemzeti Bank

According to the draft Constitution, the MNB's Governor may appoint the Deputy Governors, while according to Article 51(1) of the Law on the Magyar Nemzeti Bank, Hungary's President may appoint and dismiss the Deputy Governors on the basis of the Governor's recommendation and the Prime Minister's consent. The ECB understands that due to its position in the legislative hierarchy, the draft Constitution will prevail. Adopting the second amending proposal would overall maintain the current appointment procedure.

On the other hand, the draft Constitution no longer provides that Hungary's President dismisses the Deputy Governors but does not reassign this right. Therefore, the ECB understands that Hungary's President remains entitled to dismiss the Deputy Governors on the basis of the Law on the Magyar Nemzeti Bank.

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

Done at Frankfurt am Main, 12 April 2011.

[signed]

The President of the ECB

Jean-Claude TRICHET