EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 1 June 2012

on the increase of Hungary's quota with the International Monetary Fund

(CON/2012/45)

Introduction and legal basis

On 20 April 2012, the European Central Bank (ECB) received a request from the Hungarian Ministry for the National Economy for an opinion on a draft law amending the Articles of Agreement of the International Monetary Fund (IMF) on the reform of the Executive Board and on the increase of Hungary's quota with the International Monetary Fund (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

1.1 On 15 December 2010, the IMF Board of Governors adopted Resolution No 66-2 on the 'Fourteenth General Review of Quotas and Reform of the Executive Board'. This Resolution covers two issues, which require the consent of the IMF member countries: (i) increases in the quotas of members, and (ii) an amendment to the Articles of Agreement on the reform of the Executive Board, which provides that all the Executive Directors on the IMF Executive Board will be elected by IMF member countries. The quota increase will become effective only after the proposed amendment has entered into force. IMF member countries have committed in the same Resolution to use their best efforts to complete these steps no later than the Annual Meetings 2012.

1.2 The draft law will authorise Hungary's Governor to the IMF, currently the Minister for the National Economy, to acknowledge the abovementioned amendment's binding effect[2] on Hungary, and to adopt the proposed increase in Hungary's IMF quota by SDR 901.6 million thereby bringing Hungary's quota to a total of SDR 1,940 million. The draft law incorporates the IMF quota increase into Hungarian law.

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1 OJ L 189, 3.7.1998, p. 42.

2 Law 50 of 2005 on the procedure related to international agreements (*Magyar Kozlony*, 2005/8, 2005.6.16) provides for the rules on acknowledging the binding effect of an international agreement.

Article 5 of the draft law appoints MNB as paying agent with regard to the quota increase. However, the draft law is silent on the specific scope of MNB's role in the quota increase. Therefore, the ECB understands that Article 38(1) of the Law on the MNB applies, which means that the scope of MNB's paying agent role with regard to the payment of Hungary's quota increase will be the same as the role that MNB already has with regard to Hungary's payments of its current quota[3].

Under Article 38(4) of the Law on the MNB, the MNB holds, as a depository, the IMF's foreign exchange assets held in Hungary. The payment of the quota increase therefore would result in the change of the structure of the MNB's reserves on the one hand, and in an increase of the MNB's balance sheet assets and liabilities on the other, which would acquire the IMF quota in return for the SDR 901.6 million.

2. Monetary financing

Several ECB opinions[4] have noted that the tasks performed by a national central bank must comply with the monetary financing prohibition under Article 123 of the Treaty and 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[5]. Pursuant to Article 7 of Regulation (EC) No 3603/93, the financing by national central banks of obligations falling upon the public sector vis-à-vis the IMF is not regarded as a credit facility within the meaning of Article 123 of the Treaty. Accordingly, any possible payment by the MNB of the proposed increase in Hungary's IMF quota complies with Article 7 of Regulation (EC) No 3603/93 and does not infringe the monetary financing prohibition.

3. Central bank independence

The ECB understands that the fiscal agent functions entrusted to the MNB in connection with Hungary's IMF membership, pursuant to Article 38 of the Law on the MNB, are without prejudice to MNB's management of the SDRs in a fully independent manner in line with the principle of central bank independence enshrined in Article 130 of the Treaty and Article 7 of the Statute of the European Central Bank and of the European System of Central Banks[6].

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3 Pursuant to Article 38 of the Law on the MNB, the MNB is the paying agent for the amounts payable periodically to the IMF on behalf of Hungary, from appropriate sources determined by law or in a directly applicable Union legal act, also including the payments in connection with the participation in the Special Drawing Rights Department of the IMF. The MNB may issue non-negotiable, non-remunerated notes payable to the IMF on demand. In this context, the MNB is the authorised body on behalf of Hungary to establish and implement all the operations and transactions that may be carried out pursuant to the Articles of Agreement of the IMF, including acting as a beneficiary in its capacity as a fiscal agent with respect to any amount transferred or paid to Hungary on the basis of the Articles of Agreement of the IMF. Thus, it is incumbent on the MNB to make the payments to the IMF in relation to the increase of Hungary's IMF quota.

4 See the most recent opinions: CON/2011/68, CON/2011/89 and CON/2011/97 and CON/2011/102. All ECB Opinions are available on the ECB's website at www.ecb.europa.eu.

5 OJ L 332, 31.12.1993, p. 1.

6 Similarly, see CON/2011/102.

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

Done at Frankfurt am Main, 1 June 2012.

[signed]

The Vice-President of the ECB

Vítor CONSTÂNCIO