EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 3 June 2013

on the new supervisory tasks of the Magyar Nemzeti Bank

(CON/2013/40)

Introduction and legal basis

On 16 May 2013, the European Central Bank (ECB) received a request from the Hungarian Ministry for the National Economy (hereinafter the 'consulting authority') for an opinion on a draft law amending several financial-law related legal acts (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 and fifth 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 concerns rules applicable to the Magyar Nemzeti Bank (MNB) and to payment and settlement systems. 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 consultation request states that the Law on the MNB needs to be amended in order to harmonise Hungarian law with 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[2] (hereinafter 'EMIR'), 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[3] (hereinafter 'SEPA')[4]. To this end, the draft law amends several Hungarian laws; furthermore, it also contains provisions concerning other aspects going beyond the harmonisation of national legislation, as described in the following.

1.2 The draft law contains amendments of the Law on credit institutions and financial enterprises[5], which aim, *inter alia*, to regulate the market for, and the issuing, redemption, and supervision of activities and enterprises involved in issuing negotiable vouchers not constituting legal tender

1 OJ L 189, 3.7.1998, p. 42.
2 OJ L 201, 27.7.2012, p. 1.
3 OJ L 94, 30.3.2012, p. 22.
4 Articles 14(1), 15(1), 18, 20, 20(1), 35, 41(1), 49(1), 54(1) of EMIR and Article 10 of SEPA.
5 Law CXII of 1996.

(hereinafter 'negotiable vouchers'), and it also contains rules on the role of the MNB as the competent authority for registering and supervising entities issuing negotiable vouchers.

1.3 The draft law purports to amend several laws governing specific segments of the financial markets, including *inter alia* the Law on capital markets[6], the Law on settlement finality in payment and securities settlement systems[7], the Law on investment firms and commodity exchange service providers and the rules of their activities[8], the Law on consumer credit[9], the Law on the Financial Supervisory Authority[10], the Law on the financial stability of Hungary[11], and the Law on the MNB[12].

1.4 The draft law purports to amend the following aspects of the Law on the MNB: (i) the scope of central bank audit of the issuers of negotiable vouchers; (ii) the sanctions that may be imposed by the MNB where it establishes a breach of applicable rules during a central bank audit; (iii) the deadlines for certain administrative procedures carried out by the MNB; and (iv) the scope of the legislative powers of the Governor of the MNB.

2. General observations

2.1 *Appropriate time to consult the ECB*

The request for an urgent opinion was justified by the consulting authority by the fact that the Hungarian Parliament intended to adopt the draft law in the course of May.

According to Article 4 of Decision 98/415/EC the ECB must be consulted at an appropriate stage in the legislative process. This implies that the consultation should take place at a point in the legislative process that allows the ECB sufficient time to examine the draft legislative provisions and adopt its opinion, and the national authorities to take into account the ECB's views in accordance with Decision 98/415/EC. Therefore, the ECB would appreciate the consulting authority honouring its obligation to consult the ECB in good time in future.

2.2 *Scope of the consultation*

Article 2(1) of Decision 98/415/EC provides that national authorities shall consult the ECB on any draft legislative provision within its field of competence pursuant to the Treaty. Article 2(1) of Decision 98/415/EC contains a non-exhaustive list of matters which fall within the ECB's field of competence, and on which the ECB must be consulted by national authorities.

6 Law CXX of 2001.
7 Law XXIII of 2003.
8 Law CXXXVIII of 2007.
9 Law CLXII of 2009.
10 Law CLVIII of 2010.
11 Law CXCIV of 2011.
12 Law CCVIII of 2011.

While the draft law contains 111 articles, the consulting authority requested the ECB's opinion only in respect of Articles 99 to 105 of the draft law[13]. The consulting authority is invited to carefully consider whether any of the other provisions of the draft law are subject to the requirement to consult the ECB.

Given the urgent nature of the consultation request, the ECB has considered only the provisions on which its opinion was requested[14].

3. Specific observations

3.1 *Changes to the legal framework of the MNB*

The draft law again purports to amend the recently adopted Law on the MNB[15]. The frequency of amendments to the Law on the MNB has been criticised in previous ECB Opinions[16], as it does not provide the solid legal framework necessary for the central bank's functioning.

The ECB again emphasises its preference for addressing the outstanding issues[17] concerning the strengthening of the MNB's independence as part of the present parliamentary procedure on amendments to the Law on the MNB, in order to avoid the need for further amendments at a later stage.

3.2 *Harmonisation of national legislation and additional provisions*

3.2.1 In accordance with Decision 98/415/EC, this opinion is limited to those provisions of the draft law which relate to the MNB and which go beyond harmonisation of national law with EMIR and SEPA.

3.2.2 While the EBC welcomes in general the fact that, under the draft law, the MNB is appointed as the competent authority responsible for ensuring compliance with SEPA, it notes that Article 10 of SEPA provides that each Member State was to designate its competent authority by 1 February 2013.

3.2.3 The ECB welcomes the fact that the Hungarian market for negotiable vouchers is to be regulated, and understands that: (a) negotiable vouchers do not fall within the scope of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market[18]; and (b) regulation of this area will clearly define the central bank's role by providing for that the MNB is responsible for registering and supervising entities involved in issuing negotiable vouchers, thereby ensuring consumer protection in this area.

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13 Article 106, which was not the subject of the consultation request, also purports to amend the Law on the MNB. Articles 2, 3, 12, 49 and 73 of the draft law also concern the role of MNB.

14 I.e. Articles 99 to 105 of the draft law.

15 The new Law on the MNB came into effect on 1 January 2012.

16 See, for example, CON/2010/91, CON/2011/104 and CON/2012/43. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

17 See CON/2011/104, CON/2011/106 and CON/2012/43, as well as section 6.5 of the ECB's May 2012 Convergence Report, and Section 6.6 of the May 2010 Convergence Report.

18 OJ L 319, 5.12.2007, p. 1.

3.2.4 As regards the amendment of the legislative powers of the Governor of the MNB, the ECB would like to point out, in line with the point made in paragraph 2.2, that draft national legislation prepared for adoption by the Governor of the MNB falls within the competence of the ECB and is therefore subject to the consultation requirement, in accordance with the provisions of Decision 98/145/EC.

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

Done at Frankfurt am Main, 3 June 2013.

[signed]

The President of the ECB

Mario DRAGHI