EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 27 January 2010

on the tasks of the Magyar Nemzeti Bank relating to Hungary's membership of the International Monetary Fund

(CON/2010/13)

Introduction and legal basis

On 6 January 2010 the European Central Bank (ECB) received a request from the Hungarian Ministry of Finance for an opinion on a draft law integrating several amendments to the Articles of Agreement of the International Monetary Fund (IMF) into Hungarian law, as well as amending the Law on the Magyar Nemzeti Bank (MNB)[1] (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[2], as the draft law relates to the 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 Under Hungarian law[3], generally binding international agreements to which the Republic of Hungary is a party have to be incorporated into national law by means of a legal act. The Articles of Agreement of the IMF (hereinafter the 'Articles of Agreement') as they stood on 6 May 1982 were incorporated into Hungarian law by Law-Decree 6 of 1982. The main purpose of Articles 1 to 5 of the draft law is to implement the amendments to the Articles of Agreement since 1982 (the Third, Fourth and the Fifth Amendments[4]) in Hungarian law.

1.2 Article 1 of the draft law implements the Third Amendment to the Articles of Agreement, which concerns the consequences of a Member State failing to fulfil any of its obligations under the Articles of Agreement, such as, among others, the suspension of voting rights. As stated in the

1 Law LVIII of 2001, published in the *Magyar Közlöny* 2001/76 (VII. 5.).

2 OJ L 189, 3.7.1998, p. 42.

3 Article 16(1) of Law XI of 1987 on legislation.

4 The Fifth Amendment consists of IMF Resolution Nos 63-2 and 63-3.

preamble of the draft law, the Third Amendment to the Articles of Agreement entered into force under international law on 11 November 1992. Under Hungarian law, it will enter into force eight days after publication of the draft law.

1.3 Article 2 of the draft law implements the Fourth Amendment to the Articles of Agreement, which concerns supplementing the existing reserve assets, authorising the IMF to allocate special drawing rights (SDRs) and the detailed regulations of the special one-time allocation of SDRs. As stated in the preamble of the draft law, the Fourth Amendment to the Articles of Agreement entered into force under international law on 10 August 2009. Under Hungarian law, it will enter into force eight days after publication of the draft law.

1.4 The purpose of Articles 3 to 5 of the draft law is to incorporate the Fifth Amendment to the Articles of Agreement. Articles 3 and 4 acknowledge the binding force of the Fifth Amendment to the Articles of Agreement. Article 5 refers to the appointment procedure for the alternates to the Executive Directors; the method of calculating the total votes of the members; the possible use of the currency held in the Investment Account, as well as the termination of the Investment Account; the possible use of the currency held in the Disbursement Account; and, finally, the specific procedural regulations to be followed should the IMF sell gold assets. These Articles will enter into force as regulated in the amendments to the Articles of Agreement.

1.5 Article 6 of the draft law puts in place regulations similar to those that previously existed for the MNB's tasks relating to the Republic of Hungary's IMF membership[5] by amending the Law on the MNB. The tasks listed in Article 6 of the draft law, which will be the new Article 42/A of the Law on the MNB, are the following: (i) the MNB will be the agency making periodic payments to the IMF acting as agent on behalf of the Republic of Hungary; (ii) the MNB may issue non-negotiable and non interest bearing notes payable to the IMF in accordance with the Articles of Agreement; (iii) the MNB will perform the task of fiscal agent required by the Articles of Agreement on behalf of the Republic of Hungary and, in this context, the MNB will act as a beneficiary in its capacity as fiscal agent with respect to any amount transferred or paid to the Republic of Hungary based on the provisions of the Articles of Agreement; (iv) the MNB will attend to the safekeeping of the IMF's foreign currency reserves held in the Republic of Hungary as a designated depository. Article 6 will enter into force eight days after the publication of the draft law.

2. General observations

The ECB reminds the Ministry of Finance that the tasks performed by the national central banks must comply with the monetary financing prohibition under Article 123(1) of the Treaty, which prohibits, *inter alia*, overdraft facilities or any other type of credit facility with the national central banks in favour of

5 Presidential Board Decision 7/1982 was repealed by Law LXXXII of 2007, published in the *Magyar Közlöny* 2007/83 (VI. 29.).

central governments[6]. However, Article 7 of Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 [now 123] and 104b(1) [now 125(1)] of the Treaty[7] provides that the financing by the 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. The ECB notes therefore that, should there be any payment by the MNB of the Republic of Hungary's obligations to the IMF, such financing would fall within the scope of Article 7 of Regulation (EC) No 3603/93 and would not constitute a form of monetary financing prohibited by the Treaty.

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

Done at Frankfurt am Main, 27 January 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET

6 See also other ECB opinions: CON/2009/5, CON/2009/33, CON/2009/35, CON/2009/41 and CON/2009/100, available on the ECB's website at www.ecb.europa.eu.

7 OJ L 332, 31.12.1993, p. 1.