EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 9 December 2013

on the data reporting obligations supporting supervisory tasks of the Magyar Nemzeti Bank

(CON/2013/88)

Introduction and legal basis

On 11 November 2013, the European Central Bank (ECB) received a request from the Magyar Nemzeti Bank (MNB) for an opinion on four draft decrees related to statistical data provisions to the MNB (hereinafter collectively referred to as the 'draft decrees').

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 fourth 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 decrees relate to the collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payments statistics. 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 decrees

1.1 Pursuant to the provisions of the new Law on the Magyar Nemzeti Bank[2], the Hungarian Financial Supervisory Authority (HFSA) was dissolved and its functions and responsibilities were transferred to the MNB on 1 October 2013. From this date, the MNB became the entity not only responsible for macro-prudential policy, but also for micro-prudential supervision of the entire financial market. As a result, the Governor of the MNB has been entrusted with adopting secondary legislation on subject matters relating to the MNB's new supervisory functions.

1.2 The draft decrees regulate the data reporting obligations of certain supervised entities operating in the following markets: (a) the money market, e.g. credit institutions, financial enterprises, payment institutions; (b) the capital market, e.g. investment companies, investment funds, investment service providers; and (c) the insurance market, e.g. insurance companies, small and large associations, independent insurance agents and the Association of Hungarian Insurance Companies. One of the draft decrees also lays down data reporting obligations for pension funds and pension providers.

1 OJ L 189, 3.7.1998, p. 42.

2 Law CXXXIX of 2013 on the Magyar Nemzeti Bank.

1.3 The explanatory memorandum attached to the consultation request indicates that the main objectives to be achieved by imposing these reporting obligations on supervised institutions are to: (a) verify compliance with prudential and consumer protection rules applicable to these entities; (b) ensure the availability of institution-level monitoring and risk assessment; (c) provide the necessary data for macro-prudential analyses; and (d) prepare statistical analyses and publications.

1.4 The draft decrees also aim to transpose specific provisions of Directive 2013/36/EU of the European Parliament and of the Council[3] (hereinafter the 'CRD IV Directive') into Hungarian law, and effect changes and clarifications to Hungarian law made necessary by Regulation (EU) No 575/2013 of the European Parliament and of the Council[4].

2. The appropriate time to consult the ECB

The MNB has sought the ECB's opinion on an urgent basis, given that the draft decrees are due to enter into force on 1 January 2014.

In recent opinions[5] the ECB has drawn the Hungarian legislator's attention to the fact that the *lacuna* resulting from the general repeal of all legislation applicable to supervised entities adopted by the President of the HFSA on the dissolution of the HFSA and transfer of its responsibilities to the MNB would cause legal uncertainty for the supervised entities and hinder the MNB's ability to adopt the regulations applicable to supervised entities in a timely manner. For reasons of legal certainty, the ECB also considered that, unless the decrees adopted by the President of the HFSA became obsolete from an operational rather than an institutional point of view, the legislation previously adopted by the President of the HFSA should continue to apply after the transfer of supervisory tasks from the HFSA to the MNB until the MNB is ready to adopt new decrees regulating the subject matter at hand. However, the Hungarian legislator has failed to introduce such a provision into the Law on the Magyar Nemzeti Bank.

In the light of the above, the ECB reiterates that, in accordance with Article 4 of Decision 98/415/EC, it must be consulted 'at an appropriate stage' in the legislative process, which means that such a consultation should take place at a point in the legislative process that affords the ECB sufficient time to examine the draft legislative provisions and adopt its opinion. Pursuant to Article 3(4) of Decision 98/415/EC, Member States are obliged to suspend the process of adoption of draft legislative provisions pending submission of the ECB's opinion to allow the relevant national authorities to meaningfully consider the ECB's opinion prior to adoption of the provisions.

Accordingly, the ECB stresses that, even in cases of particular urgency or where the legislation has reached an advanced stage, the national authorities are not relieved of their duty to consult the ECB at an appropriate stage in the legislative process that allows sufficient time for: (a) the ECB to examine the

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3 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

4 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

5 See Opinions CON/2013/56 and CON/2013/71. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

draft legislative provisions and adopt its opinion in all required language versions; and (b) the national authorities to take into account the ECB's views in accordance with Decision 98/415/EC. The ECB would appreciate the MNB honouring its obligation to consult the ECB in line with the provisions of Decision 98/415/EC in the future.

3. General observations

3.1 The ECB welcomes the fact that reference is made in the draft decrees to acts of Union law concerning the prudential supervision of the activities of credit institutions and investment firms that lay down the supervised entities' reporting obligations. At the same, the ECB also notes that provisions of Union law also regulate supervised entities' reporting obligations in the areas of capital market regulation[6] and insurance[7], and that there has been alignment of the draft decrees with these provisions. Further alignment will be necessary in view of upcoming Union legislative proposals[8].

3.2 Article 58 of the CRD IV Directive provides that Member States should take the appropriate measures to ensure that a competent authority is not prevented from transmitting information concerning monetary, deposit protection, systemic and payment aspects data to, *inter alia*, the members of the European System of Central Banks (ESCB) for the purposes of their tasks. The Hungarian legislator should therefore ensure that the applicable Hungarian confidentiality regime is aligned with the CRD IV Directive.

3.3 In relation to the statistical aspect of the reporting obligations the draft decrees impose on the supervised entities, the ECB observes that, when the ECB was consulted on the draft Law on the Magyar Nemzeti Bank, it pointed out[9] that the Law on the Magyar Nemzeti Bank does not list the ECB and the ESCB among the organisations with which the MNB cooperates. Notwithstanding the provisions of Article 4(6) of the Law on the Magyar Nemzeti Bank providing for the MNB fulfilling its statistical reporting obligations towards the ECB, the MNB's legal obligation to cooperate with the ESCB and the ECB in the field of statistics should be observed. Such cooperation is provided for in the first indent of Article 46.2 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as the 'Statute of the ESCB').

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6 See, e.g. Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1); and Article 9 of 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 (OJ L 201, 27.7.2012, p. 1).

7 See, e.g., Article 35 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

8 See, e.g. Title IV of a proposal for a regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories (COM(2011) 652 final).

9 See paragraph 3.1.9 of Opinion CON/2013/56.

Although Regulations adopted under Article 34.1 of the Statute of the ESCB in the field of statistics do not confer any rights or impose any obligations on Member States that have not adopted the euro, Article 5 of the Statute of the ESCB, which concerns the collection of statistical information, applies to all Member States, regardless of whether they have adopted the euro. Furthermore, Article 4 of Council Regulation (EC) No 2533/98[10], which was adopted on the basis of Article 5.4 of the Statute of the ESCB, requires all Member States to '… organise themselves in the field of statistics and … fully cooperate with the ESCB in order to ensure the fulfilment of the obligations arising out of Article 5 of the Statute'. Accordingly, Member States whose currency is not the euro are under an obligation to design and implement, at national level, all measures they consider appropriate to collect the statistical information needed to fulfil the ECB's statistical reporting requirements and to make timely preparations in the field of statistics in order for them to become Member States whose currency is the euro. The ECB expects the MNB to cooperate with the ESCB and the ECB in the field of statistics as provided for by the applicable Union legislation in relation to the data it collects.

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

Done at Frankfurt am Main, 9 December 2013.

[signed]

The President of the ECB

Mario DRAGHI

10 Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8).