



OPINION OF THE EUROPEAN CENTRAL BANK
of 7 October 2013
on the integrated Hungarian supervisory framework
(CON/2013/71)

Introduction and legal basis

On 24 August 2013, the European Central Bank (ECB) received a request from the Hungarian Ministry of National Economy (hereinafter the ‘consulting authority’) for an opinion on a new draft law amending several legal acts in the area of financial regulation (hereinafter the ‘draft law’) in connection with a Law CXXXIX of 2013 on the Magyar Nemzeti Bank¹ (hereinafter referred to as the ‘new Law on MNB’) facilitating the integration of the Hungarian Financial Supervisory Authority (HFSA) into the Magyar Nemzeti Bank (MNB). This consultation request is a follow-up to Opinion CON/2013/56 on the draft law replacing the Law on the Magyar Nemzeti Bank².

On 16 September 2013, the ECB received amendments to the draft law from the consulting authority. This correspondence also contained a further request for an ECB opinion on a new draft government decree (hereinafter the ‘draft decree’) amending several government decrees in connection with the integration of the HFSA into the MNB. Given that this request is also directly connected to the new integrated supervisory structure in Hungary, the ECB has decided to issue a joint opinion on both consultation requests.

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 sixth indents 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 provisions³, as the draft law concerns the MNB and contains rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. 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 and the draft decree

The Hungarian Parliament has adopted new legislation changing the MNB’s competence and institutional framework by establishing a new legal framework for integrated supervision of the

¹ The newly adopted Law CXXXIX of 2013 on the MNB has been published in Magyar Közlöny No. 158/2013, (26.9.2013).

² Law CCVIII of 2011.

³ OJ L 189, 3.7.1998, p. 42.

Hungarian financial market as of 1 October 2013⁴. The purpose of the draft law and the draft decree is to implement this change in other related legal acts.

The HFSA is supervising credit institutions, capital markets, insurance markets and financial funds until 30 September 2013. The operational conduct of these functions is further defined in several Hungarian legal acts. To this effect, the draft law⁵ amends 57 Hungarian legal acts and the draft decree amends 50 government decrees in the area of financial regulation. Most of the amendments contained in the draft law and in the draft decree are of a technical nature, as the aim of these legislative changes is to reflect the establishment of a new integrated supervisory structure in Hungary by replacing the references to the HFSA and its competences with a reference to the MNB and its new tasks and competences in various legal acts. Moreover, the draft law repeals certain secondary legal acts.

2. The appropriate time to consult the ECB

On 24 August 2013, the ECB received the request from the consulting authority for an opinion on the draft law. This request was made on an urgent basis with reference to the Hungarian Parliament's schedule for discussing the draft law on 9 September 2013.

On 30 August 2013, the Government submitted a different version of the draft law to the Parliament⁶, but this version was not sent to the ECB. Furthermore, on 16 September 2013, the consulting authority requested the ECB's opinion on amendments made to the draft law. The additional request for an opinion on the draft decree similarly stressed the urgency of a quick response from the ECB due to the advanced stage of legislation. In view of the above, this opinion has been adopted in response to the consultation requests, and is based on the texts submitted to the ECB on 24 August and 16 September 2013.

The draft law subject to this consultation was adopted on 23 September 2013 shortly after the ECB had been consulted on its amendments, but before it could adopt this opinion. The draft law was published shortly after its adoption as Law CXLIII of 2013⁷. Similarly, the draft decree was also adopted, and published as Government Decree 345/2013 (IX. 30.)⁸. As a consequence, there was no possibility for the Hungarian legislator to take the ECB's views into account before adopting the draft law. This circumstance rendered the request for the ECB adopting its opinion in an urgent procedure obsolete.

⁴ For the ECB's opinion on this proposal, see Opinion CON/2013/56. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

⁵ Submitted to the ECB under the title 'Proposal on the amendments of acts concerning the proposal on the Act of Central Bank of Hungary'.

⁶ Draft law T/12018. egyes törvényeknek a Magyar Nemzeti Bankról szóló törvénnyel összefüggő, valamint egyéb célú módosításáról, available at the Hungarian Parliament's website.

⁷ Published in Magyar Közlöny No. 159/2013 (27.9.2013).

⁸ Published in Magyar Közlöny No. 160/2013 (30.9.2013.)

With respect to the consultation on the draft law and the draft decree, the Hungarian authorities have not complied with their duty to consult the ECB. The adoption of this opinion in no way divests the Hungarian authorities of their duty to consult in compliance with this obligation, since this duty is important for the application and interpretation of the enacted laws and any future amendments.

The ECB reiterates that, in accordance with Article 4 of Decision 98/415/EC, the ECB must be consulted ‘at an appropriate stage’ in the legislative process, which implies that such 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. Following from the wording of 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.

In this respect, 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 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 Ministry honouring its obligation to consult the ECB line with the provisions of Decision 98/415/EC in the future.

3. Coherence and legal certainty

The draft law and the draft decree replace the references to the HFSA and its competences by a reference to the MNB and its new tasks and competences in various legal acts. In doing so, they fail to provide an adequate level of legal certainty, since they refer to the new integrated supervisory institutional regime using both ‘MNB’ and ‘Supervisory Authority’ and provides clarification only in certain cases⁹. In the interest of legal certainty, the ECB suggests using the single term ‘Supervisory Authority’ in all amended legal acts in which a reference to the new integrated supervisory institutional regime is intended.

Furthermore, Article 165 of the draft law still contains a reference to the HFSA, which is inconsistent with the future integrated framework of financial supervision under the sole competence of the MNB.

⁹ See Articles 11, 39, 75, 104, 107, 113, 126, 133, 138, 145, 164 and 180 of the draft law.

4. The proposed timeline for the effective restructuring of financial supervision in Hungary

The new Law on the MNB provides that the MNB is to be fully functional as regards its new supervisory tasks on 1 October 2013¹⁰. In this regard, the ECB noted in Opinion CON/2013/56¹¹ that the new Law on the MNB does not provide for a sufficient period of time between its adoption and the dissolution of the HFSA, which is also the date on which the MNB shall commence performing its new tasks. Most of the provisions of the draft law and the draft decree are also due to enter into force on 1 October 2013¹².

The ECB wishes to reiterate that legal certainty would require a longer period of time between the adoption and application of the provisions of the draft law and the draft decree in order to enable the entities operating in the financial markets to bring their internal procedures into line with the new structure of financial supervision in Hungary, thus providing for greater stability within the financial system.

5. Central bank independence and supervisory independence

- 5.1 During the current consultation procedure, the new Law on the MNB was adopted without taking into account all the ECB's observations as regards the MNB's independence; therefore concerns remain regarding compliance with the principle of central bank independence enshrined in Article 130 of the Treaty.
- 5.2 As regards the draft law, the Law on the HFSA currently empowers the HFSA President to adopt secondary legislation on regulatory matters within his competence. Following the transfer of supervisory tasks from the HFSA to the MNB, the MNB, as general successor, will inherit these legislative powers. On this basis, Article 183 of the draft law repeals 47 decrees adopted by the HFSA President, including, *inter alia*, the decree on the payment, calculation and conditions for the supervisory fee¹³. In Opinion CON/2013/56, the ECB assumed that the HFSA President's decree providing financing for the supervisory tasks will continue to apply after the transfer of supervisory tasks. In the absence of such continued effect, and also considering the above observations concerning the timeline, the MNB will be unable to raise funds from the supervised entities to cover the costs of its supervisory activities, at least temporarily until the adoption of relevant new financing rules. In the meantime, the MNB will therefore be obliged to finance its supervisory activities from existing resources. This raises serious concerns as regards the MNB's financial independence. In Opinion CON/2013/56, the ECB highlighted that in order to guarantee the MNB's financial independence, the MNB should be involved in determining the amount of financial contribution payable by supervised entities, and should also independently define the methods to be used to calculate such contributions, taking into account its actual costs. On the other hand, and in

¹⁰ See Article 172 of the draft law.

¹¹ See paragraph 3.1.11 of CON/2013/56.

¹² See Article 181 of the draft law.

¹³ See point 23 of Article 187.

line with the principle of central bank independence, the MNB should be able to do this at its own pace and discretion, without ending up in a situation where it has insufficient financial resources to carry out its ESCB-related tasks. The principle of financial independence requires an NCB to have sufficient means to perform its ESCB-related tasks as well as its national tasks, including the tasks newly entrusted to the MNB. Therefore, the HFSA President's decrees providing financing for the supervisory tasks should continue to apply after the transfer of supervisory tasks to the MNB.

- 5.3 The Core Principles for Effective Banking Supervision developed by the Basel Committee on Banking Supervision¹⁴ provide that '[t]he supervisor possesses operational independence, transparent processes, sound governance, budgetary processes that do not undermine autonomy and adequate resources, and is accountable for the discharge of its duties and use of its resources'¹⁵.

The *lacuna* resulting from the general repeal of all legislation as of the effective date of the transfer of supervisory tasks from the HFSA to the MNB, would – in addition to causing legal uncertainty for supervised entities – affect the MNB's ability to take independent supervisory decisions.

The ECB considers that for reasons of legal certainty, unless these decrees become obsolete from an operational rather than an institutional point of view, the legislation adopted by the HFSA President 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. Introducing a general clause into the draft law to this effect could eliminate the concerns outlined above.

- 5.4 Moreover, pursuant to Article 20 of the draft law, the MNB will only be able to withdraw the operating licence of a credit institution after obtaining the approval of the Minister of National Economy. This is not in line with the principle of supervisory independence¹⁶. This should be given due consideration when formulating the amendments to the specific legal acts reflecting the conduct of tasks and competences of the HFSA to be transferred to the MNB by the draft law.

6. Division of macro-prudential competences between the Government and the MNB

The ECB notes that the new law on the MNB assigns the fundamental tasks related to the exploration and management of systemic risks to the MNB, thus entrusting it with the conduct of macro-prudential policy and macro-prudential oversight. However, the definition of certain issues

¹⁴ See the website of the Bank for International Settlements (BIS) at <http://www.bis.org/publ/bcbs230.pdf>.

¹⁵ See Principle 2 of the Core Principles for Effective Banking Supervision.

¹⁶ See also Principle 2.1 of the Core Principles for Effective Banking Supervision.

related to macro-prudential policy remains in the competence of the Government. As regards the Law on credit institutions and financial enterprises¹⁷, the Law on capital markets¹⁸, and the Law on the protection of consumers¹⁹, the draft law does not adequately reflect the division of tasks between the MNB and the Government to be introduced as of 1 October 2013 by the new Law on the MNB. Each of these legal acts would benefit from the introduction of additional provisions providing for a further transfer of Government competences to the MNB. These could include, for example, provisions relating to defining liquidity requirements for credit institutions and mismatches in the structures of maturity of foreign exchange exposures; the personal, organisational and technical requirements applicable to clearing houses; and the definition of consumer creditworthiness.

At the same time, the ECB expects to be consulted on any draft national legislation prepared by the MNB Governor that falls within the ECB's competence, in accordance with the provisions of Council Decision 98/415/EC.

Finally, and also in connection with the provisions of the draft law providing for the operational conduct of the new supervisory and macro-prudential functions of the MNB, the ECB would appreciate receiving feedback from the consulting authority as regards steps taken in order to address the outstanding issues concerning central bank independence as noted in this opinion and in Opinion CON/2013/56.

This opinion is without prejudice to the conclusions of the European Systemic Risk Board's follow-up assessment of Recommendation ESRB/2011/3 of the European Systemic Risk Board of 22nd December 2011 on the macro-prudential mandate of national authorities²⁰, which will be prepared pursuant to Article 17 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board²¹.

¹⁷ See the amendments to Article 235 of Law CXII of 1996.

¹⁸ Law XLVII of 2008.

¹⁹ Law CLV of 1997.

²⁰ OJ C 41, 14.2.2013, p.1.

²¹ OJ L 331, 15.12.2010, p. 1.

7. The MNB's cooperation with other bodies

One of the amendments to the draft law²² repeals the provision that allows the MNB to forward individual statistical data pertaining to the activities of investment firms and commodity dealers to the ECB and the ESCB without it being considered an infringement. All observations made in paragraph 3.1.9 of Opinion CON/2013/56 are also valid in this case and the draft law should therefore reflect the legal obligation to cooperate with the ESCB and the ECB in the field of statistics.

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

Done at Frankfurt am Main, 7 October 2013.

[signed]

The President of the ECB

Mario DRAGHI

²² Point 8 of amending proposal T/12018/3.