



**OPINION OF THE EUROPEAN CENTRAL BANK**  
**of 5 April 2012**  
**on amendments to the Law on the Magyar Nemzeti Bank**  
**(CON/2012/26)**

**Introduction and legal basis**

On 7 March 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 Law CCVIII of 2011 on the Magyar Nemzeti Bank<sup>1</sup> (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<sup>2</sup>, 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**

The draft law will repeal certain provisions of Law CCVIII of 2011 on the Magyar Nemzeti Bank (hereinafter the ‘MNB Law’).

According to the draft law, Article 34 of the MNB Law on the obligation of the MNB to submit the agendas for Monetary Council meetings to the Government and on the right of the Government’s representative to be present at Monetary Council meetings will be repealed.

The draft law repeals Article 46(10) of the MNB Law, thereby cancelling the two specific dismissal scenarios.

Furthermore, the draft law repeals Article 46(17) of the MNB Law that provides for the abolition of the Monetary Council on Hungary joining the euro zone.

The draft law also repeals Article 30 of the Transitional Provisions to Hungary’s Fundamental Law, thereby deleting the legal provisions regarding the possibility of a merger between the MNB and the Hungarian Financial Supervisory Authority (FSA).

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<sup>1</sup> *Magyar Közlöny*, 2011/166., 30.12.2011, p. 41648.

<sup>2</sup> OJ L 189, 3.7.1998, p. 42.

## **2. General observations**

Some of the ECB's earlier observations in Opinion CON/2011/106 regarding the principle of central bank independence have been taken into account by deleting Article 30 of the Transitional Provisions of the Fundamental Law, which would have enabled the MNB to merge with the FSA.

## **3. The number of Monetary Council members and decision-making**

The ECB reiterates its observations in Opinion CON/2011/104 and CON/2011/106 on the composition of the MNB's decision-making bodies, as well as its observations with regard to the adverse effect of the frequent changes to the MNB's institutional framework. Against the backdrop of the constant changes in the composition of the MNB's decision-making bodies, the increase in the number of Monetary Council members, together with the possibility of increasing the number of deputy governors – without consulting the MNB and giving due consideration to its needs or providing reasonable arguments to support the expansion against the MNB's advice – gives rise to serious concerns whether this could be used to influence the decision-making process to the detriment of central bank independence.

## **4. Grounds for dismissal of the members of the Monetary Council**

As stated in the ECB's Convergence Reports<sup>3</sup>, the statute of a national central bank (NCB) must ensure that Governors may not be dismissed for reasons other than those mentioned in Article 14.2 of the Statute of the European System of Central Banks (hereinafter the 'Statute of the ESCB'). The purpose of this requirement is to prevent the authorities involved in the appointment of governors, particularly the Government or Parliament, from exercising discretion to dismiss a governor. NCB statutes should either contain grounds for dismissal that are compatible with those laid down in Article 14.2 of the Statute, or omit any mention of grounds for dismissal since Article 14.2 is directly applicable. In addition, in the light of Article 130 of the Treaty and Article 14.2 of the Statute of the ESCB, personal independence would be jeopardised if the same grounds for dismissal of governors were not also to apply to other members of the decision-making bodies of NCBs involved in the performance of ESCB-related tasks<sup>4</sup>. This applies in particular where a governor is 'first among equals' with colleagues with equivalent voting rights or where such other members may have to deputise for the Governor.

The draft law proposes deleting Article 46(10) of the Law on the MNB. Pursuant to Article 46(10) of the Law on the MNB, a member of the Monetary Council, including the Governor, as Chair of the Monetary Council, and the Deputy Governors, may be dismissed only if they no longer fulfil the conditions required for the performance of their duties or have been guilty of serious misconduct. Article 46(10) provides that, for these grounds, the Governor, as Chair of the Monetary Council, and the Deputy Governors, may be dismissed by Hungary's President and that the other members of the Monetary

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<sup>3</sup> In particular 2010 Convergence Report, p. 20. All ECB Opinions and Reports are available on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>4</sup> See paragraph 8 of Opinion CON/2004/35; paragraph 8 of Opinion CON/2005/26; paragraph 3.3 of Opinion CON/2006/44; paragraph 2.6 of Opinion CON/2006/32; and paragraphs 2.3 and 2.4 of Opinion CON/2007/6.

Council may be dismissed by the Parliament. Pursuant to Article 47(3) of the Law on the MNB, Article 46(10) also applies to the MNB's Governor, which presumably refers to the Governor outside his function as chair of the Monetary Council. There are also other references in the Law on the MNB to Article 46(10). The draft law deletes Article 46(10) of the Law on the MNB without deleting the references to Article 46(10) in Article 47(3) and elsewhere in the Law on the MNB.

For reasons of legal certainty, the ECB strongly recommends not deleting Article 46(10) of the Law on the MNB. Article 46(10) is in line with the grounds for dismissal under Article 14.2 of the Statute of the ESCB<sup>5</sup> and applies to all Monetary Council members. Another reason to maintain Article 46(10) of the Law on the MNB is that, if Article 46(10) is deleted, neither the Fundamental Law nor the Law on the MNB would specify whether the Parliament or Hungary's President are empowered to dismiss the Monetary Council members.

## **5. Other remaining concerns related to the Law on the MNB**

### *5.1 Salaries*

The ECB's Convergence Reports in 2008 and 2010, and several ECB opinions<sup>6</sup> on autonomy in staff matters, stressed that Member States may not impair an NCB's ability to recruit and retain the qualified staff necessary for it to perform independently the tasks conferred on it by the Treaty, the Statute of the ESCB and national legislation. Furthermore, an NCB may not be put into a position where it has limited or no control over its decision makers, or where a Member State's government is in a position to influence the NCB's policy on staff matters.

To protect the MNB's autonomy in remuneration matters, in accordance with the principle of central bank independence under Article 130 of the Treaty, the Hungarian authorities must ensure that any amendment to the legislation on the remuneration of the MNB's decision-makers is decided in close cooperation with the MNB, taking due account of the MNB's views<sup>7</sup> regarding the impact of such legislative amendments on its ongoing ability to carry out its tasks. The concern remains that the repeated amendments since September 2010 to legislation on salaries of members of the MNB's decision-making bodies have been implemented without taking into account the above aspects of the MNB's financial independence addressed repeatedly in previous opinions<sup>8</sup>. All recently adopted amendments applied from the moment of their adoption to all concerned subjects. Therefore, the observations in CON/2011/56, CON/2011/104 and CON/2011/106 are still valid. The remuneration of the current Governor and Deputy Governors has been significantly decreased compared to the remuneration paid at the beginning of their term of office. The manner and frequency of these changes in the remuneration of the members of the central bank's decision-

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<sup>5</sup> The stated aim of the draft law, as specified in the explanatory memorandum, is precisely to bring the Law on the MNB in line with the Treaty and the Statute of the ESCB.

<sup>6</sup> ECB Opinions CON/2008/9, CON/2009/45, CON/2009/47, CON/2010/42, CON/2010/51 and CON/2010/56.

<sup>7</sup> See for example paragraph 4.3 of ECB Opinion CON/2010/42 and Opinion CON/2010/56.

<sup>8</sup> See CON/2010/56 and CON/2010/91.

making bodies represent signs of pressure on them from the national authorities. Article 51 of the Law on the MNB should only apply for future appointments and after taking due account of the MNB's views.

#### 5.2 *Replacement of the Governor*

The ECB reiterates the observation in Opinion CON/2010/91 related to the replacement of the MNB's Governor. Pursuant to Article 47(8) of the Law, the Deputy Chair of the Monetary Council may replace the Governor in the latter's absence. The Law needs to provide sufficient guarantees and rules for a successor to the Governor in the event of termination of office due to expiry of the term of office, resignation, dismissal or death to avoid any external ad hoc interference and at the same time to ensure the smooth and continuous functioning of the Monetary Council<sup>9</sup>.

#### 5.3 *Oath*

Pursuant to Article 46(7) in conjunction with Article 47(3) and 48(2) of the Law on the MNB, the MNB's Governor and Deputy Governors must take an oath before Hungary's President, while other Monetary Council members take an oath before the Parliament. Law XXVII of 2008 specifies the wording of the oath to be taken by public officials appointed by the Parliament<sup>10</sup>. Therefore, it is not clear if the same oath is taken by the Governor and the Deputy Governors as the other members of the Monetary Council. The MNB's Governor acts in a dual capacity as a member of the MNB's Monetary Council and of the ECB's decision-making bodies. The wording of the oath should take into account and reflect the status and the obligations and duties of the MNB's Governor as a member of the ECB's decision-making bodies.

Furthermore, the other members of the Monetary Council are also involved in the performance of ESCB-related tasks. The oath should not affect the personal independence of the Governor, the Deputy Governors and the other members of the Monetary Council and therefore should not hinder them from performing ESCB-related tasks. Articles 46(7), 47(3) and 48(2) of the Law on the MNB, and Law XXVII of 2008, need to be adapted in this regard.

#### 5.4 *Jurisdiction of the Court of Justice of the European Union*

Pursuant to Article 46(12) and (13) of the Law on the MNB, an appeal may be brought in the Labour Court against a motion for dismissal of a member of the Monetary Council, in accordance with the Labour Code. As regards the MNB's Governor, similar provisions apply in Article 47(5) and (6), and, as regards the Deputy Governors, in Article 48(2) of the Law on the MNB. Articles 47(5) and 46(12) of the Law on the MNB specifically refer to the right to appeal to the Court of Justice of the European Union pursuant to Article 14.2 of the Statute of the ESCB. However, Article 77 of the Law on the MNB, which amends Articles 46(12) and 47(5) of the Law

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<sup>9</sup> See Opinion CON/2010/91.

<sup>10</sup> Law XXVII of 2008 on the oath of certain public officials specified the following wording: 'I, ...[name of the person taking the oath], hereby undertake to be faithful to Hungary and to its Fundamental Law, I will comply and ensure compliance with its laws, I will fulfil my office as [name of the position] for the benefit of the Hungarian people. (Depending on the belief of the person taking the oath:) So help me God!'

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from 1 January 2013, does not contain any reference to Article 14.2 of the Statute of the ESCB and to the right to seek a remedy before the Court of Justice of the European Union. The amended Article 47(5) of the Law on the MNB will only provide that the Prime Minister sends the dismissal proposal pursuant to Article 47(4) to the MNB's Governor, who may appeal to the Labour Court in accordance with the Labour Code. Pursuant to Article 47(6) and (7), the decision to dismiss the Governor is taken by the President and countersigned by the Prime Minister after the period for appeal at the Labour Court expires or after the Court's decision is rendered final. Although Article 77 of the Law on the MNB is silent on the jurisdiction of the Court of Justice of the European Union, Article 14.2 of the Statute of the ESCB is directly applicable and continues to apply.

### 5.5 *Legal integration of the MNB into the Eurosystem*

The ECB reiterates its observations in Opinion CON/2011/104 and CON/2011/106 on Hungary being a Member State with a derogation and therefore obliged to comply with all adaptation requirements under the Treaties. Previous ECB Opinions have already pointed out that the recast of the MNB Law offered the Hungarian authorities the opportunity to make the necessary adjustments to ensure the MNB's full integration into the Eurosystem when Hungary adopts the euro.

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

Done at Frankfurt am Main, 5 April 2012.

[signed]

*The Vice-President of the ECB*

Vítor CONSTÂNCIO