

OPINION OF THE EUROPEAN CENTRAL BANK

of 26 February 2024

**on the single treasury account managed by the Magyar Nemzeti Bank and the competencies of
the Supervisory Board of the Magyar Nemzeti Bank
(CON/2024/5)**

Introduction and legal basis

On 16 January 2024 the European Central Bank (ECB) received a request from the Hungarian Minister for Finance for an opinion on (1) amendments to the Law on Magyar Nemzeti Bank (hereinafter the ‘Law on the MNB’) and the Law on public finance concerning the management of treasury accounts by the Magyar Nemzeti Bank (MNB) contained in Law CIX of 2023 amending certain laws related to strengthening the competitiveness of domestic economic operators and increasing the efficiency of public administration, which was promulgated in *Magyar Közlöny* (the Hungarian Gazette) on 22 December 2023¹ (hereinafter the ‘adopted amendments to the Laws on the MNB and public finance’); and (2) draft amendments to the Law on the MNB concerning the competencies of the MNB’s Executive and Supervisory Boards (hereinafter the ‘draft amendments to the Law on the MNB’, and together with the adopted amendments to the Laws on the MNB and public finance, the ‘amendments’).

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/EC², as the amendments relate to a national central bank (NCB). 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 amendments

Purpose of the adopted amendments to the Laws on the MNB and public finance

- 1.1 The adopted amendments to the Laws on the MNB and public finance introduce single foreign currency treasury accounts to supplement the existing single Hungarian forint (HUF) treasury account. The single foreign currency treasury accounts will be managed by the MNB.
- 1.2 The Law on the MNB provides that the MNB is to pay interest on the current balance of the HUF single bank account of the treasury to the central budget at the market interest rate but not exceeding the central bank base rate. The adopted amendments to the Laws on the MNB and public finance provide that the MNB is to pay interest on the current balance of the single foreign currency treasury

¹ A hazai gazdasági szereplők versenyképességének erősítésével és a közigazgatás hatékonyságának növelésével összefüggő egyes törvények módosításáról szóló 2023. évi CIX. törvény, Magyar Közlöny 2023/187. (XII. 22.).

² Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

accounts at the market interest rate and that it will have due regard to the prohibition of monetary financing when determining such rate.

- 1.3 The adopted amendments to the Laws on the MNB and public finance are to enter into force on the day following publication in the *Magyar Közlöny* of the decision of the Minister responsible for the macroeconomic foundations of the budget, issued after the receipt of the official notification of the ECB's consent.

Purpose of the draft amendments to the Law on the MNB

- 1.4 According to the reasoning accompanying the draft amendments to the Law on the MNB, it is appropriate to strengthen the accountability and transparency of the MNB, which carries out its tasks independently, focusing on its basic tasks, on the basis of organisational and managerial autonomy. It is therefore considered necessary to clarify the rules governing the activities of certain bodies of the MNB, in particular as regards its other tasks. To this end, the tasks and powers of the Executive Board and the Supervisory Board of the MNB should be clarified.

Role and composition of the Executive and Supervisory Boards of the MNB under the Law on the MNB

- 1.5 Under the Law on the MNB the bodies of the MNB are the Monetary Council, the Financial Stability Council, the Executive Board and the Supervisory Board³. The Monetary Council is the MNB's supreme decision-making body and the scope of its competence includes, inter alia, (1) strategic decisions concerning the MNB's tasks relating to monetary policy, banknotes and coins, official foreign exchange and gold reserves, foreign exchange operations and the collection and publication of statistical information; and (2) the definition of the strategic framework within which the Financial Stability Council makes its decisions in respect of the MNB's tasks concerning payment and securities settlement systems, macroprudential policy, resolution and supervision of the system of financial intermediation⁴.
- 1.6 Under the Law on the MNB the Executive Board, comprising the MNB Governor and the two or three Deputy Governors, are responsible for implementing the decisions of the Monetary Council and of the Financial Stability Council, as well as for managing the operations of the MNB⁵. The scope of the Executive Board's competences include (1) managing the implementation of the decisions of the Monetary Council and the Financial Stability Council; (2) establishing the accounting report of the MNB, issuing decisions on the payment of dividends, and approving the draft year-by-year forecast of the preliminary level of the equity at the end of the previous year and its expected development, and approving the draft report to be sent to the shareholder on the MNB's management and assets; (3) approving matters related to the organisation and internal management of the MNB; (4) approving study plans and programmes relating to the operation of the MNB and the performance of its tasks, including the costs of the development and operational plan; (5) managing the MNB's internal audit organisation in respect of tasks falling outside the scope of competence of the Supervisory Board, and discussing the observations and plans of the internal audit; (6) amending the collective

³ Article 8 of the Law on the MNB.

⁴ Articles 9 and 13 of the Law on the MNB.

⁵ Articles 11(1) and 12(1) and (2) of the Law on the MNB.

agreement in respect of employment rights and obligations; and (7) adopting decisions relating to the management of HUF and foreign currency accounts on behalf of certain persons⁶. In addition, the Monetary Council may authorise the Executive Board to decide on any matter falling within its scope of competence⁷.

- 1.7 Under the Law on the MNB the Supervisory Board is the body responsible for the continuous supervision of the MNB on behalf of the owner, and comprises a chair and three additional members elected by the Parliament, a representative of the Minister for Finance as well as an expert appointed by the Minister for Finance⁸. The supervision carried out by the Supervisory Board is limited in two respects. First, the scope of competence of the Supervisory Board does not include the MNB's tasks relating to monetary policy, banknotes and coins, official foreign exchange and gold reserves, foreign exchange operations, the collection and publication of statistical information, payment and securities settlement systems, macroprudential policy, resolution and supervision of the system of financial intermediation, or the impact of these tasks on the MNB's profit and loss⁹. Second, even though the Supervisory Board supervises the internal audit department of the MNB, this supervision does not extend to the tasks listed above. With respect to duties falling outside the scope of Supervisory Board's competence, the internal audit department of the MNB is supervised by the Executive Board. If the Executive Board, while exercising its management powers, becomes aware of any audit findings within the scope of the Supervisory Board's competence, it must immediately provide information to the Supervisory Board on such findings¹⁰.

Changes to the Executive and Supervisory Boards of the MNB under the draft amendments to the Law on the MNB

- 1.8 The draft amendments to the Law on the MNB propose to expand the scope of competences of the Executive Board to include the adoption of decisions in relation to the tasks of the MNB other than the basic tasks of the MNB, taking into account that (1) the Executive Board must inform the MNB's Supervisory Board of the decisions on a quarterly basis; (2) decisions involving expenditure in excess of that provided for in the MNB's Statutes are subject to the prior approval of the Supervisory Board; and (3) the Chair of the Executive Board reports to the Supervisory Board at least once a year on the MNB's activities relating to such other tasks.
- 1.9 The Law on the MNB currently provides that in line with its tasks and primary objective, the MNB may establish a business association in which it has a majority holding or may create a foundation¹¹. The draft amendments to the Law on the MNB amend this provision to provide that in line with its tasks and primary objective, the MNB may establish a business association in which it has a majority holding, acquire shares in an existing company, or create a foundation. Within the framework of the supervision on behalf of the owner, the Supervisory Board of the MNB or, at the request of the Supervisory Board, the internal audit department of the MNB is entitled to audit the management of

6 Article 12(4) of the Law on the MNB.
 7 Article 12(5) of the Law on the MNB.
 8 Article 14(1) and (4) of the Law on the MNB.
 9 Article 14(3) of the Law on the MNB.
 10 Article 14(2) of the Law on the MNB.
 11 Article 162(2) of the Law on the MNB.

any company in which the MNB has a majority holding, any foundation established by the MNB and any company in which a foundation established by the MNB has a majority holding. The draft amendments to the Law on the MNB also require that in the case of any company in which the MNB has a majority holding and any foundation established by the MNB, the creation of a supervisory board consisting of three or five members who are natural persons is mandatory.

2. Observations concerning the adopted amendments to the Laws on the MNB and public finance

- 2.1 The ECB lacks competence under the Treaties to consent to the adoption of national laws. Rather, under Articles 127(4) and 282(5) of the Treaty, the ECB must be consulted by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out in Decision 98/415/EC, and the ECB may submit opinions to national authorities on matters in its fields of competence. In accordance with Article 4 of Decision 98/415/EC, each Member State must ensure that the ECB is consulted at an appropriate stage enabling the authority initiating the draft legislative provision to take into consideration the ECB's opinion before taking its decision on the substance. Based on this, the ECB should have been consulted on the adopted amendments to the Laws on the MNB and public finance in draft form prior to their adoption¹².
- 2.2 Article 123(1) of the Treaty prohibits overdraft facilities or any other type of credit facility with the NCBs in the European System of Central Banks in favour of, inter alia, central governments of Member States. National legislation that enables an NCB to hold government deposits and to service government accounts does not raise concerns about compliance with the monetary financing prohibition as long as such provisions do not enable the extension of credit, including overnight overdrafts. However, there would be a concern about compliance with the monetary financing prohibition if, for example, national legislation enabled the remuneration of deposits or current account balances above, rather than at or below, market rates¹³.
- 2.3 The ECB welcomes that the adopted amendments to the Laws on the MNB and public finance provide that the interest paid by the MNB to the central budget on the current balance of the single foreign currency treasury accounts cannot exceed market rates, and that when setting the interest rate for these accounts the MNB will have due regard to the prohibition of monetary financing. The ECB refers in this respect to Decision ECB/2014/8 of the European Central Bank¹⁴, which sets out the criteria applied by the ECB regarding the remuneration of government deposits by NCBs for the purposes of monitoring compliance with the monetary financing prohibition laid down in Article 123(1) of the Treaty.

¹² See also Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions, p. 18, available on the ECB's website at www.ecb.europa.eu.

¹³ See ECB Convergence Report 2022, p. 36, available on the ECB's website at www.ecb.europa.eu.

¹⁴ Decision ECB/2014/8 of the European Central Bank of 20 February 2014 on the prohibition of monetary financing and the remuneration of government deposits by national central banks (OJ L 159, 28.5.2014, p. 54).

3. Observations concerning the draft amendments to the Law on the MNB

Interpretation of the draft amendments to the Law on the MNB

- 3.1 The ECB understands that the new supervisory competences of the Supervisory Board will be limited, as the Supervisory Board will not have the right to supervise any MNB activities that would directly or indirectly affect the basic tasks of the MNB. Given that, under the Law on the MNB, the basic tasks of the MNB comprise the MNB's tasks relating to monetary policy, banknotes and coins, official foreign exchange and gold reserves, foreign exchange operations, the collection and publication of statistical information, payment and securities settlement systems and macroprudential policy¹⁵, the Supervisory Board is not entitled to supervise any activities related to those tasks of the MNB, including the provision of IT services related to the performance of the MNB's basic tasks. Consistent with the foregoing, the ECB understands that the Supervisory Board will not have the right to supervise any activities of any company in which the MNB has a majority holding if such activity directly or indirectly affects these basic tasks of the MNB. For the sake of legal certainty, the ECB suggests reformulating the draft provision on the supervision of majority owned companies to reflect this understanding.
- 3.2 The ECB understands that, in accordance with the Law on the MNB, tasks other than the basic tasks are the other tasks of the MNB, which only the MNB is to perform, in accordance with the applicable law, without prejudice to the achievement of its primary objective and the performance of its basic tasks¹⁶. The ECB understands that these non-basic tasks include, inter alia, the MNB's tasks relating to resolution and to supervision of the system of financial intermediation¹⁷. Given that the Law on the MNB stipulates that the scope of competence of the Supervisory Board is not to include the MNB's tasks relating to resolution and to supervision of the system of financial intermediation, the ECB understands that the Supervisory Board would have no supervisory competences with respect to these non-basic tasks of the MNB, including the activities of any company in which the MNB has a majority holding if such activity directly or indirectly affects these particular non-basic tasks of the MNB or their impact on the MNB's profit and loss.

Central bank independence

- 3.3 Pursuant to Article 130 of the Treaty, when exercising the powers and carrying out the tasks and duties conferred on it by the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'), neither an NCB nor any member of its decision-making bodies may seek or take instructions from, inter alia, any government of a Member State or from any other body, which includes a statutory body such as the Supervisory Board. Consequently, the Supervisory Board may not seek to influence the performance of any of the MNB's tasks related to its membership of the European System of Central Banks (ESCB)¹⁸. The independence of the MNB should be fully respected.

¹⁵ Article 4(13) of the Law on the MNB.

¹⁶ Article 4(14) of the Law on the MNB.

¹⁷ Article 4(8), (9), (10) and (14) of the Law on the MNB.

¹⁸ See paragraph 6 of Opinion CON/2002/16, paragraph 2.3 of Opinion CON/2019/12, paragraph 2.1 of Opinion CON/2020/7 and paragraph 14.2.4 of Opinion CON/2020/13. All ECB opinions are published on EUR-Lex.

- 3.4 The Supervisory Board does not intervene in the performance of ESCB-related tasks, nor in the decisions concerning those tasks. Regarding the Supervisory Board's proposed competence to give prior approval for decisions of the Executive Board in relation to the MNB's other, non-basic tasks involving expenditure in excess of that provided for in the MNB's Statutes, the ECB underlines that this right cannot place the MNB in a situation which in any way undermines its ability to carry out independently a task falling within the scope of the ESCB¹⁹. National laws should guarantee, in a manner that does not allow for arbitrary interpretations, the independence of the central bank in order for it to achieve its ESCB objectives and carry out its ESCB tasks.

This opinion will be published on EUR-Lex.

Done at Frankfurt am Main, 26 February 2024.

[signed]

The President of the ECB

Christine LAGARDE

¹⁹ See judgment of 13 September 2022, *Banka Slovenije*, C-45/21, EU:C:2022:670, paragraph 97.