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From:	Mr Mario DRAGHI, President of the European Central Bank
date of receipt:	7 June 2016
To:	Mr Jeroen Dijsselbloem, President of the ECOFIN Council
Subject:	ECB Convergence report 2016 - Part 4

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Delegations will find attached the fourth part of the European Central Bank's Convergence report 2016.

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Encl.:

ECB Convergence Report June 2016 - Part 4

## 6 Statistical methodology of convergence indicators

**The examination of the convergence process is highly dependent on the quality and integrity of the underlying statistics; the compilation and reporting of statistics, particularly government finance statistics (GFS), must not be subject to political considerations.** Member States are invited to consider the quality and integrity of their statistics as a matter of priority, to ensure that a proper system of checks and balances is in place when compiling these statistics and to apply certain standards with respect to governance and quality in the domain of statistics.

**National statistical authorities in each Member State and the EU statistical authority within the European Commission (Eurostat) should enjoy professional independence and ensure that European statistics are impartial and of a high quality.** This is in line with the principles laid down in Article 338(2) of the Treaty, Regulation (EC) No 223/2009 as amended by Regulation (EU) 2015/759 (Regulation on European statistics)<sup>122</sup> and the European Statistics Code of Practice endorsed by the Commission in 2005 and revised in September 2011 (the Code of Practice).<sup>123</sup> Article 2(1) of the Regulation on European statistics states that the development, production and dissemination of European statistics shall be governed by the following statistical principles: a) professional independence; b) impartiality; c) objectivity; d) reliability; e) statistical confidentiality; and f) cost effectiveness. Pursuant to Article 11 of the Regulation, these statistical principles are further elaborated on in the Code of Practice.

**Against this background, this chapter reviews the quality and integrity of the convergence indicators in terms of the underlying statistics.** It provides information on the statistical methodology of the convergence indicators, as well as on the compliance of the underlying statistics with the standards necessary for an appropriate assessment of the convergence process.

### 6.1 Institutional features relating to the quality of statistics for the assessment of the convergence process

**The governance of the European Statistical System (ESS) has been progressively improved, in particular with the adoption of the Code of Practice in 2005.** In the specific context of the EU fiscal surveillance system and of the excessive deficit procedure (EDP), Council Regulation (EU) No 679/2010<sup>124</sup> granted Eurostat new competences for regularly monitoring and verifying public finance data,

<sup>122</sup> Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics (OJ L 87, 31.03.2009, p. 164) as amended by Regulation (EU) 2015/759 of the European Parliament and of the Council of 29 April 2015 (OJ L 123, 19.5.2015, p. 90).

<sup>123</sup> European Statistics Code of Practice endorsed by the Commission in its Recommendation of 25 May 2005 on the independence, integrity and accountability of the national and Community statistical authorities (COM(2005) 217 final).

<sup>124</sup> Council Regulation (EU) No 679/2010 of 26 July 2010 amending Regulation (EC) No 479/2009 as regards the quality of statistical data in the context of the excessive deficit procedure (OJ L 198, 30.07.2010, p. 1).

which it exercises by conducting more in-depth dialogue visits to Member States and by extending such visits to public entities supplying upstream public finance data to the national statistical institutes (NSIs).

**Furthermore, the legislative package of six legal texts adopted to strengthen the economic governance structure of the euro area and the EU as a whole relies on high-quality statistical information, which needs to be produced under robust quality management.**<sup>125</sup> In this context, the Code of Practice was revised in September 2011 in order to distinguish between the principles to be implemented by ESS members and the principles relating to the institutional environment that are to be implemented by Member State governments.

**The Regulation on European statistics has been recently amended in order to, among other things, clarify that the principle of professional independence of NSIs applies unconditionally.** Statistics must indeed be developed, produced and disseminated in an independent manner, free of any pressures from political or interest groups or from EU or national authorities, and existing institutional frameworks must not be allowed to restrict this principle.

**Bulgaria, Poland and Romania are urged to reconsider the division of responsibilities in the field of general government statistics to ensure that the compilation of EDP and GFS statistics is impartial and is not subject to political considerations.** The institutional responsibilities for the compilation of EDP data and GFS in the countries are shown in Table 6.1. In Poland and Romania the Ministry of Finance compiles EDP debt data. In Bulgaria, the Ministry of Finance compiles quarterly government debt data, while the NSI compiles annual government debt. Consistency of the annual and quarterly debt data is one of the criteria used to evaluate the quality of the data. Such consistency can only be achieved effectively if the data are compiled by the same independent institution.

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<sup>125</sup> On 13 December 2011, the reinforced Stability and Growth Pact entered into force with a new set of rules for economic and fiscal surveillance. These measures, known as the "six-pack", consist of five regulations and one directive, proposed by the European Commission and approved by all EU Member States and the European Parliament in October 2011.

**Table 6.1**  
Quality and integrity of convergence statistics

	Bulgaria	Czech Republic
<b>Institutional features relating to the quality and integrity of the statistics used in assessing the convergence process</b>		
Legal independence of the national statistical institute	According to the Law on Statistics, statistics are based on the principles of professional independence, impartiality, objectivity, reliability, statistical confidentiality and cost effectiveness. According to Article 8 of the Law on Statistics, the President of the NSI is appointed by the Prime Minister. The term of office is fixed (seven years, reappointment is possible, only once).	According to Article 5 of the State Statistical Service Act, statistics are based on objectivity, impartiality and independence. According to Article 3, the Head of the NSI is appointed by the President of the Republic.
Administrative supervision and budget autonomy	The NSI has the status of a state agency and is directly subordinated to the Council of Ministers. It has budget autonomy on the basis of an annual amount assigned from the state budget.	The NSI is a central statistical agency within the public administration. It has budget autonomy on the basis of an annual amount assigned from the state budget.
Legal mandate for data collection	The Law on Statistics determines the main principles of data collection.	The State Statistical Service Act determines the main principles of data collection.
Legal provisions regarding statistical confidentiality	According to Articles 25 to 27 a of the Law on Statistics, the confidentiality of the statistical data is secured.	According to Articles 16, 17 and 18 of the State Statistical Service Act, the confidentiality of the statistical data is secured.
<b>HICP inflation<sup>1</sup></b>		
Compliance with legal minimum standards	Eurostat made a compliance monitoring visit in 2013 and published a report in 2015 confirming that the methods used for producing the HICP are satisfactory. There were no apparent instances of non-compliance with the HICP methodology.	Eurostat made a compliance monitoring visit in 2008 and published a report in 2009 confirming that in general the methods used for producing the HICP are satisfactory. There were no apparent instances of non-compliance with the HICP methodology.
Other issues	Eurostat considered the representativity of the HICP to be generally appropriate.	Eurostat considered the representativity of the HICP in terms of accuracy and reliability to be generally adequate.
<b>Government finance statistics</b>		
Data coverage	Revenue, expenditure, deficit and debt data are provided for the period 2006-15.	Revenue, expenditure, deficit and debt data are provided for the period 2004-15.
Outstanding statistical issues	No major outstanding statistical issues identified.	No major outstanding statistical issues identified.
Institution responsible for the compilation of statistics	The NSI compiles the non-financial and financial accounts of government, as well as annual government debt. The Ministry of Finance compiles quarterly government debt.	The NSI compiles the non-financial and financial accounts of government, as well as government debt.

1) The full reports on the findings and recommendations of the HICP compliance monitoring visits for each country are available at <http://ec.europa.eu/eurostat/web/hicp/methodology/compliance-monitoring>

**Table 6.1**  
Quality and integrity of convergence statistics (cont'd)

	Croatia	Hungary
<b>Institutional features relating to the quality and integrity of the statistics used in assessing the convergence process</b>		
Legal independence of the national statistical institute	According to Article 5 of the Official Statistics Act, statistics are based on the principles of relevance, impartiality, reliability, transparency, timeliness, professional independence, cost effectiveness, consistency, publicity, statistical confidentiality, the use of individual data for exclusively statistical purposes, and public accountability. The Head of the NSI is appointed by the Government and is accountable to the Government.	According to Article 1 and 3/A of Act XLVI on Statistics, statistics are based on objectivity, independence and confidentiality. The Head of the NSI is appointed by the Prime Minister. The term of office is fixed (six years; reappointment is possible, only twice).
Administrative supervision and budget autonomy	The NSI is a state administration organisation which autonomously performs its tasks in conformity with the law. It has budget autonomy on the basis of an annual amount assigned from the state budget.	The NSI is a public administration under the immediate supervision of the Government. It has budget autonomy on the basis of an annual amount assigned from the state budget.
Legal mandate for data collection	The Official Statistics Act determines the main principles of data collection.	Act XLVI on Statistics determines the main principles of data collection.
Legal provisions regarding statistical confidentiality	According to Article 59 of the Official Statistics Act, the confidentiality of the statistical data is secured.	According to Article 17 of Act XLVI on Statistics, the confidentiality of the statistical data is secured.
<b>HICP inflation<sup>1</sup></b>		
Compliance with legal minimum standards	Eurostat made a compliance monitoring visit in 2015 and published a report in that year confirming that in general the methods used for producing the HICP are satisfactory. Some instances of non-compliance with the HICP methodology were identified, but were considered by Eurostat to be limited and unlikely to have a major impact in practice on the annual average rates of change in the HICP.	Eurostat made a compliance monitoring visit in 2008 and published a report in 2009 confirming that in general the methods used for producing the HICP are satisfactory. Some instances of non-compliance with the HICP methodology were identified, but were considered by Eurostat to be limited and unlikely to have a major impact in practice on the annual average rates of change in the HICP.
Other issues	Eurostat considered that comparability to the HICP of other countries can be regarded as assured.	Eurostat considered the representativity of the HICP in terms of accuracy and reliability to be generally adequate.
<b>Government finance statistics</b>		
Data coverage	Revenue, expenditure, deficit and debt data are provided for the period 2006-15.	Revenue, expenditure and deficit data are provided for the period 2006-15.
Outstanding statistical issues	No major outstanding statistical issues identified.	In April 2016 Eurostat expressed a reservation on the quality of the data reported by Hungary in relation to the sector classification of Eximbank.
Institution responsible for the compilation of statistics	The NSI compiles the non-financial accounts; the NCB compiles the debt and financial accounts.	The NSI compiles the non-financial accounts; the NCB compiles the debt and financial accounts.

**Table 6.1**  
Quality and integrity of convergence statistics (cont'd)

	Poland	Romania
<b>Institutional features relating to the quality and integrity of the statistics used in assessing the convergence process</b>		
Legal independence of the national statistical institute	According to Article 1 of the Law on Official Statistics, statistics are based on reliability, objectivity and transparency. The Head of the NSI is selected by open competition and appointed by the President of the Council of Ministers. The term of office is fixed (five years).	The autonomy of official statistics is stated in the Statistical Law, together with the principles of confidentiality, transparency, reliability, proportionality, statistical deontology and cost/efficiency ratio. The Head of the NSI is appointed by the Prime Minister. The term of office is fixed (six years; reappointment is possible, only once).
Administrative supervision and budget autonomy	The NSI is a central agency within the public administration under supervision of the President of the Council of Ministers. It has budget autonomy on the basis of an annual amount assigned from the state budget.	According to the Statistical Law, the NSI is a specialised institution, subordinated to the Government. It is financed via the state budget.
Legal mandate for data collection	The Law on Official Statistics determines the main principles of data collection.	According to the Statistical Law, "the official statistics in Romania are implemented and coordinated by the NSI".
Legal provisions regarding statistical confidentiality	According to Articles 10, 11, 12, 38, 39 and 54 of the Law on Official Statistics, the confidentiality of the statistical data is secured.	The Statistical Law states that "during statistical research, from collection to dissemination, the official statistics services and statisticians have the obligation to adopt and implement all the necessary measures for protecting the data referring to individual statistics subjects (natural or legal persons), data obtained directly from statistical research or indirectly through administrative sources or from other suppliers".
<b>HICP inflation<sup>1</sup></b>		
Compliance with legal minimum standards	Eurostat made a compliance monitoring visit in 2015. The report from this visit is not yet finalised. In its 2008 report, Eurostat confirmed that in general the methods used for producing the HICP are satisfactory. Some instances of non-compliance with the HICP methodology were found, but were considered by Eurostat to be limited and unlikely to have a major impact in practice on the annual average rates of change in the HICP.	Eurostat made a compliance monitoring visit in 2007 and published a report in that year confirming that in general the methods used for producing the HICP are satisfactory. There were no apparent instances of non-compliance with the HICP methodology.
Other issues	Eurostat considered the representativity of the HICP in terms of accuracy and reliability to be generally adequate.	Eurostat considered the representativity of the HICP in terms of accuracy and reliability to be generally adequate.
<b>Government finance statistics</b>		
Data coverage	Revenue, expenditure, deficit and debt data are provided for the period 2006-15.	Revenue, expenditure, deficit and debt data are provided for the period 2006-15.
Outstanding statistical issues	No major outstanding statistical issues identified.	There is a unit currently classified as being in the financial sector which may be subject to a reclassification.
Institution responsible for the compilation of statistics	The NSI compiles the non-financial and financial accounts of government. The Ministry of Finance compiles government debt.	The NSI compiles the non-financial accounts of government. The Ministry of Finance compiles government debt. The NCB compiles the financial accounts of government.

**Table 6.1**  
Quality and integrity of convergence statistics (cont'd)

Sweden	
<b>Institutional features relating to the quality and integrity of the statistics used in assessing the convergence process</b>	
Legal independence of the national statistical institute	According to Section 3 of the Official Statistics Act, statistics are objective and available to the public. The Head of the NSI is appointed by the Government. The term of office is fixed (for a maximum of three years).
Administrative supervision and budget autonomy	The NSI is a central statistics agency, subordinated to, but not part of, the Ministry of Finance. Approximately half of its turnover is provided by the Ministry of Finance, the other half by charging government agencies and commercial customers for statistical production and advice.
Legal mandate for data collection	The Official Statistics Act determines the main principles of data collection.
Legal provisions regarding statistical confidentiality	According to Sections 5 and 6 of the Official Statistics Act, the confidentiality of the statistical data is secured.
<b>HICP inflation<sup>1</sup></b>	
Compliance with legal minimum standards	Eurostat made a compliance monitoring visit in 2011 and published a report in 2013 confirming that in general the methods used for producing the HICP are satisfactory. Some instances of non-compliance with the HICP methodology were found, but were considered by Eurostat to be limited and unlikely to have a major impact in practice on the annual average rates of change in the HICP.
Other issues	Eurostat considered the representativity of the HICP in terms of accuracy and reliability to be generally adequate.
<b>Government finance statistics</b>	
Data coverage	Revenue, expenditure, deficit and debt data are provided for the period 2006-15.
Outstanding statistical issues	No major outstanding statistical issues identified.
Institution responsible for the compilation of statistics	The NSI compiles the non-financial and financial accounts of government, as well as government debt.

## 6.2 HICP inflation

**This section considers the methodology and quality of the statistics underlying the measurement of price developments, specifically the HICP.** The HICP was developed for the purpose of assessing convergence in terms of price stability on a comparable basis. It is published for all EU Member States by Eurostat.<sup>126</sup> The HICP covering the euro area as a whole has been the main measure of price developments for the single monetary policy of the ECB since January 1999.

**Article 1 of Protocol (No 13) on the convergence criteria (annexed to the Treaties) requires price convergence to be measured by means of the CPI on a comparable basis, taking into account differences in national definitions.** Council Regulation (EC) No 2494/95 concerning harmonized indices of consumer

<sup>126</sup> For details on the HICP legislative framework, recommendations and information notes in force, see the *Compendium of HICP reference documents*, Publications Office of the European Union, Luxembourg, 2013.

prices was adopted in October 1995.<sup>127</sup> The HICPs have also been further harmonised on the basis of several EU Council and European Commission regulations. They use common standards for the coverage of the items, the territory and the population included (all these elements are major reasons for differences between national CPIs). Common standards have also been established in several other areas, for example the treatment of new goods and services.

**The HICPs use annually updated expenditure weights (or, until 2011, less frequent updates if this did not have a significant effect on the index) and cover all goods and services included in household final monetary consumption expenditure.** The latter is derived from the national accounts domestic concept of household final consumption expenditure but excludes owner-occupied housing costs. The prices observed are the prices households actually pay for goods and services in monetary transactions and thus include all taxes (minus subsidies) on products, e.g. VAT and excise duties. Expenditure on health, education and social services is covered to the extent that it is financed (directly or through private insurance) by households and not reimbursed by the government. Estimates of the development of administered prices in the HICP refer to prices which are directly set or significantly influenced by the government, including national regulators. They are based on a common definition and compilation and are published by Eurostat.

**Eurostat must ensure that the statistical practices used to compile national HICPs comply with HICP methodological requirements and that good practices in the field of consumer price indices are being followed.** Eurostat carries out compliance monitoring visits and publishes its findings in information notes made available on its website.

### 6.3 Government finance statistics

**This section describes the methodology and quality of the statistics used to measure fiscal developments.** GFS are based mainly on national accounts concepts as defined in the ESA 2010<sup>128</sup> and Commission Regulation (EU) No 220/2014 of 7 March 2014 amending Council Regulation (EU) No 479/2009.<sup>129</sup> They refer to the institutional sector “general government” as defined in the ESA 2010. This comprises central government, state government (in Member States with a federal structure), local government and social security funds. It typically does not include public corporations.

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<sup>127</sup> OJ L 257, 27.10.1995, p. 1.

<sup>128</sup> See Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union (OJ L 174/1, 26.06.2013).

<sup>129</sup> Commission Regulation (EU) No 220/2014 of 7 March 2014 amending Council Regulation (EC) No 479/2009 as regards references to the European system of national and regional accounts in the European Union (OJ L 69/101, 08.03.2014).



**The methodological changes related to the changeover from the ESA 95 to the ESA 2010 in October 2014 had a varied impact on the GFS, with very limited impact on the government deficit/surplus and a more pronounced impact on government debt.** The levels of government debt increased mainly because more entities were included in the general government sector owing to changes in the criteria applied for classification. The increase in the number of entities classified in the general government sector also had a small impact on the government balance (deficit/surplus). Moreover, GDP increased for most countries with the change to the ESA 2010, resulting in lower debt-to-GDP and deficit-to-GDP ratios. In general, the changeover to the ESA 2010 in October 2014 did not impact the availability of the GFS data adversely.

**The general government deficit (-)/surplus (+) is equal to the ESA 2010 item “net lending (+)/net borrowing (-)”, which in turn is equal to “total revenue” minus “total expenditure”.** The primary government deficit/surplus is the government deficit/surplus excluding interest expenditure.

**The general government debt is the sum of the outstanding gross liabilities at nominal value (face value) in currency and deposits, debt securities (e.g. government bills, notes and bonds) and loans.** It excludes financial derivatives, such as swaps<sup>130</sup>, as well as trade credits<sup>131</sup> and other liabilities not represented by a financial document, such as overpaid tax advances. It also excludes contingent liabilities, such as government guarantees and pension commitments. While government debt is a gross concept in the sense that neither financial nor non-financial assets are deducted from liabilities, it is consolidated within the general government sector and therefore does not include government debt held by other government units.

**The measure of GDP used for compiling government deficit and debt ratios is the ESA 2010 GDP at current market prices.**

### 6.3.1 Data source

**The NCBs provide the ECB with detailed GFS data under the ECB’s GFS Guideline.**<sup>132</sup> Although the Guideline is only legally binding for the euro area NCBs, the non-euro area EU NCBs also transmit GFS data to the ECB by the same deadlines and using the same procedures. The Guideline lays down requirements for the transmission of annual data with detailed breakdowns of annual revenue and expenditure and the deficit-debt adjustment. In addition, it requests figures on

<sup>130</sup> However, on the basis of a Eurostat guidance note released in 2008, lump sums received by government under off-market interest rate swaps are treated as government loans.

<sup>131</sup> A 2012 Eurostat decision stipulates that trade credits that are refinanced without recourse to the original holder and trade credits that are renegotiated beyond the simple extension of the initial maturity need to be reclassified as loans and are thus included in the EDP general government debt.

<sup>132</sup> Guideline ECB/2014/21 of 3 June 2014 amending Guideline ECB/2013/23 on government finance statistics (OJ L 267, 6.9.2014, p. 9).

general government debt with breakdowns by instrument, by initial and residual maturity and by holder.

### 6.3.2 Methodological issues

**The GFS must comply with the ESA 2010 and reflect decisions and guidelines issued by Eurostat for specific cases involving the general government sector.**

The borderline classification cases between the financial, non-financial and general government sectors continue to be examined closely by Eurostat and statistical compilers and may lead to further reclassifications and changes in the EDP and GFS data.

**In the Czech Republic two MFIs and an insurance company are reclassified inside the general government sector for EDP purposes.** These entities are classified as part of the financial sector in other statistical data compiled by the NCB (e.g. monetary and financial statistics, and balance of payments statistics). The resultant discrepancy in sector classification between those statistics and GFS is well documented and has been made known to users.

**In April 2016 Eurostat expressed a reservation on the quality of the data reported by Hungary in relation to the sector classification of Eximbank (Hungarian Export-Import Bank Plc, which is included in the ECB's list of MFIs).** According to Eurostat, Eximbank should be reclassified inside the general government sector, which would result in an increase in government debt. Eximbank is currently classified in the financial sector uniformly in all statistics, including monetary and financial statistics, as well as balance of payments statistics. The Hungarian statistical authorities consider the bank to be a financial intermediary and would like to ensure the consistency of financial statistics.

### 6.4 Exchange rates

**Article 3 of Protocol (No 13) on the convergence criteria defines what is meant by the criterion on participation in the ERM of the European Monetary System.**

The bilateral exchange rates of the Member States' currencies vis-à-vis the euro are daily reference rates recorded by the ECB at 14:15 CET and published on the ECB's website.<sup>133</sup> Nominal and real effective exchange rates (EERs) are constructed by applying trade weights (based on a geometric weighting) to the bilateral nominal and real exchange rates of the Member States' currencies vis-à-vis the currencies of 38 trading partners. Both nominal and real EER statistics are calculated by the ECB.

<sup>133</sup> From 1 July 2016 the ECB's euro foreign exchange reference rates will be published at around 16:00 CET (see press release: <http://www.ecb.europa.eu/press/pr/date/2015/html/pr151207.en.html>).

## 6.5 Long-term interest rates

**Article 4 of Protocol (No 13) on the convergence criteria requires interest rates to be measured on the basis of long-term government bonds or comparable securities, taking into account differences in national definitions.** While Article 5 assigns the responsibility for providing the statistical data for the application of the Protocol to the European Commission, the ECB, given its expertise in the area, assists in this process by defining representative long-term interest rates and collecting the data from the NCBs for transmission to the Commission. This is a continuation of the work carried out by the EMI as part of the preparations for Stage Three of EMU in close liaison with the Commission. The conceptual work resulted in the definition of seven key features to be considered in the calculation of long-term interest rates, as presented in Table 6.2. Long-term interest rates refer to bonds denominated in national currency.

**Table 6.2**  
Statistical framework for defining long-term interest rates for the purpose of assessing convergence

Concept	Recommendation
Bond issuer	The bond should be issued by the central government.
Maturity	As close as possible to ten years' residual maturity. Any replacement of bonds should minimise maturity drift, the structural liquidity of the market must be considered.
Coupon effects	No direct adjustment.
Taxation	Gross of tax.
Choice of bonds	The selected bonds should be sufficiently liquid. This requirement should determine the choice between benchmark or sample approaches, depending on national market conditions.
Yield formula	The "redemption yield" formula should be applied.
Aggregation	Where there is more than one bond in the sample, a simple average of the yields should be used to produce the representative rate.

## 6.6 Other factors

**The last paragraph of Article 140(1) of the Treaty states that the reports of the European Commission and the ECB shall take account of, in addition to the four main criteria, the results of the integration of markets, the situation and development of the national balance of payments and an examination of the development of unit labour costs and other price indices.** Whereas, for the four main criteria, Protocol (No 13) stipulates that the Commission will provide the data to be used for the assessment of compliance and describes those statistics in more detail, it makes no reference to the provision of statistics for these "other factors".

**As regards the results of the integration of markets, two sets of indicators are used.** These are: i) statistics on financial development and integration referring to

the structure of the financial system;<sup>134</sup> and ii) statistics on financial and non-financial integration with the euro area.<sup>135</sup>

**The data covering the structure of the financial system are provided by the NCBs.** The data underlying the indicators concerning the debt securities issued by resident financial corporations (MFIs and non-monetary financial corporations) and non-financial corporations are reported by the respective NCBs in accordance with the methodology set out in Guideline ECB/2014/43 of 6 November 2014 amending Guideline ECB/2014/15 on monetary and financial statistics.<sup>136</sup> The indicator relating to stock market capitalisation refers to listed shares issued by resident corporations following the methodology given in the same Guideline. The indicators concerning MFI credit to residents and claims of euro area MFIs on resident MFIs are based on available data collected by the ECB as part of the MFI balance sheet statistics collection framework. The data is obtained from the countries under review and, for the latter indicator, also from the euro area countries covered by Regulation ECB/2013/33 of 24 September 2013 concerning the balance sheet of the monetary financial institutions sector (recast).<sup>137</sup> Historical data are compiled by the relevant NCBs, where appropriate. For the indicators mentioned, the statistical data relating to the euro area cover the countries that had adopted the euro at the time to which the statistics relate.

**Balance of payments and international investment position statistics are compiled in accordance with the concepts and definitions laid down in the sixth edition of the IMF's Balance of Payments and International Investment Position Manual (BPM6)<sup>138</sup> and with compilation guidance provided by the ECB and Eurostat.** This Convergence Report examines developments in the current (goods, services, primary income and secondary income) and capital accounts; the sum of the balances of these two accounts corresponds to the net lending/net borrowing of the total economy. In addition, developments in the main components of the financial account are presented together with the net international investment position and gross external debt of each country. Exports and imports of goods and services are presented vis-à-vis both the rest of the world and the euro area countries. Direct and portfolio investment assets and liabilities with the euro area are also directly identified. Forecasted data are taken from the European Commission's Economic Forecast.<sup>139</sup>

**The Convergence Report also looks at the development of unit labour costs and other price indices.** With regard to producer price indices, these data refer to domestic sales of total industry excluding construction. The statistics are collected on

<sup>134</sup> Debt securities issued by resident corporations, stock market capitalisation, MFI credit to non-government residents and claims of euro area MFIs on resident MFIs.

<sup>135</sup> External trade and investment position with the euro area.

<sup>136</sup> OJ L 93, 9.4.2015, p. 82.

<sup>137</sup> OJ L 297, 7.11.2013, p. 1

<sup>138</sup> For more details, see *European Union balance of payments and international investment position statistical methods ("B.o.p. and i.i.p. book")*, ECB, Frankfurt am Main, 2014.

<sup>139</sup> The economic forecasts made by the Directorate-General for Economic and Financial Affairs (DG ECFIN) on behalf of the European Commission:  
[http://ec.europa.eu/economy\\_finance/eu/forecasts/index\\_en.htm](http://ec.europa.eu/economy_finance/eu/forecasts/index_en.htm)

a harmonised basis under the EU regulation concerning short-term statistics.<sup>140</sup> Statistics on unit labour costs (calculated as compensation per employee divided by GDP chain-linked volumes per person employed) are derived from data provided under the ESA 2010 transmission programme. Statistics on the harmonised unemployment rate (calculated as the number of unemployed over the labour force) take into account persons between the ages of 15 and 74.

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<sup>140</sup> Council Regulation (EC) No 1165/98 of 19 May 1998 concerning short-term statistics (OJ L 162, 5.6.1998, p. 1).

## 7 Examination of compatibility of national legislation with the Treaties

The following country assessments report only on those provisions of national legislation which the ECB considered to be problematic from the perspective of their compatibility with provisions on the independence of NCBs in the Treaty (Article 130) and the Statute (Articles 7 and 14.2), provisions on confidentiality (Article 37 of the Statute), prohibitions on monetary financing (Article 123 of the Treaty) and privileged access (Article 124 of the Treaty), and the single spelling of the euro as required by EU law. They also cover the perspective of legal integration of the NCBs into the Eurosystem (in particular as regards Articles 12.1 and 14.3 of the Statute).<sup>141</sup>

### 7.1 Bulgaria

#### 7.1.1 Compatibility of national legislation

The following legislation forms the legal basis for Българска народна банка (Bulgarian National Bank) and its operations:

- the Bulgarian Constitution,<sup>142</sup>
- the Law on Българска народна банка (Bulgarian National Bank) (hereinafter the “Law on BNB”).<sup>143</sup>

The Law on the prevention and ascertainment of conflicts of interest (hereinafter the “Law on the prevention of conflicts of interest”)<sup>144</sup> applies to public office holders.

In addition, the Law on credit institutions has become relevant since it has been recently amended<sup>145</sup> to confer new tasks on Българска народна банка (Bulgarian National Bank) in relation to the establishment of a bank account register.

There have been no major changes in relation to the points identified in the ECB’s Convergence Report of June 2014, and those comments are therefore repeated in this year’s assessment. Article 14(2) of the Law on BNB has been repealed<sup>146</sup>; therefore the comment regarding its compliance with Article 14.2 of the Statute has been removed.

<sup>141</sup> According to Section 2.2.2.1 of this Convergence Report.

<sup>142</sup> Constitution of the Republic of Bulgaria, Darjaven vestnik issue 56, 13.7.1991.

<sup>143</sup> Law on Българска народна банка (Bulgarian National Bank), Darjaven vestnik issue 46, 10.6.1997.

<sup>144</sup> Darjaven vestnik issue 94, 31.10.2008.

<sup>145</sup> Darjaven vestnik issue 94, 4.12.2015.

<sup>146</sup> Darjaven vestnik issue 48, 27.6.2015.

## 7.1.2 Independence of the NCB

With regard to the independence of Българска народна банка (Bulgarian National Bank), the Law on BNB and the Law on the prevention of conflicts of interests need to be adapted as set out below.

### 7.1.2.1 Institutional independence

Article 44 of the Law on BNB prohibits the Council of Ministers and other bodies and institutions from giving instructions to Българска народна банка (Bulgarian National Bank), the Governor or the members of the Governing Council. It further prohibits Българска народна банка (Bulgarian National Bank), its Governor and the members of its Governing Council from seeking or taking instructions from the Council of Ministers or from any other body or institution. The ECB understands that the provision encompasses both national and foreign institutions in line with Article 130 of the Treaty and Article 7 of the Statute. For legal certainty reasons, at the first opportunity, this provision should be brought fully into line with Article 130 of the Treaty and Article 7 of the Statute.

### 7.1.2.2 Personal independence

Article 14(1) of the Law on BNB lists the grounds for dismissal of the members of the Governing Council, according to which the National Assembly or Bulgaria's President may relieve a member of the Governing Council from office, including the Governor, if they: (i) no longer fulfil the conditions required for the performance of their duties under Article 11(4);<sup>147</sup> (ii) are in practice unable to perform their duties for more than six months; or (iii) have been guilty of serious professional misconduct.

The first sub-paragraph of Article 14(1) of the Law on BNB cross-refers to the conditions of appointment and election in Article 11(4). To avoid any circumvention of the conditions for dismissal of Governors as established by Article 14.2 of the Statute, the first sub-paragraph of Article 14(1) of the Law on BNB should only foresee conditions that are objective, clearly defined and linked to the performance of duties of the members of the Governing Council. Therefore, this provision needs to be revised so that it mirrors the wording of Article 14.2 of the Statute.

The second sub-paragraph of Article 14(1) of the Law on BNB is in addition to the two grounds for dismissal provided for in Article 14.2 of the Statute. The third sub-

<sup>147</sup> Under Article 11(4) of the Law on BNB, a member of the Governing Council, including the Governor, may not: (i) be sentenced to imprisonment for a premeditated crime; (ii) declared bankrupt in their capacity as sole proprietor or general partner in a commercial company; (iii) have been a member of a managing or supervisory body of a company or cooperative in the two years prior to the said company or cooperative being declared insolvent; (iv) be sole proprietor, unlimited liability partner in a trading company, manager, trade proxy, trade representative, procurator, trade agent, liquidator or receiver, member of a management or controlling body of a trade company or a cooperative, with the exception of companies where Българска народна банка (Bulgarian National Bank) participates; (v) be a spouse of, live with, be a relative in direct or lateral line up to and including the fourth degree, or be connected by marriage up to and including the second degree to a member of the Governing Council.

paragraph narrows the concept of “serious misconduct” in Article 14.2 of the Statute to “serious professional misconduct”. Article 14(1) of the Law on BNB needs to be adapted further in these respects to fully comply with Article 14.2 of the Statute.

The Law on the prevention of conflicts of interests provides that breach of its provisions and the existence of a conflict of interests are grounds for dismissal of the Governor, Deputy Governors and the other members of the Governing Council of Българска народна банка (Bulgarian National Bank). Thus, the Law on the prevention of conflicts of interests specifies grounds for dismissal that are in addition to the two grounds contained in Article 14.2 of the Statute. Therefore, the Law on the prevention of conflicts of interests is incompatible with the Treaty and the Statute and needs to be brought into line with them.<sup>148</sup>

The Law on BNB is silent on the right of national courts to review a decision to dismiss any member, other than the Governor, of Българска народна банка (Bulgarian National Bank) decision-making bodies, who is involved in the performance of ESCB-related tasks. Even though this right may be available under general law, providing specifically for such a right of review could increase legal certainty.

Article 12(1) and (2) of the Law on BNB provide for the National Assembly’s powers to elect the Governor and the Deputy Governors of Българска народна банка (Bulgarian National Bank). In a 2009 case, the National Assembly claimed and acted upon the claim that it has the power to annul or amend its previous decisions, including decisions concerning the election of the Governor and Deputy Governors of Българска народна банка (Bulgarian National Bank) taken under Article 12(1) and (2) of the Law on BNB. In practice, any proper election or appointment of members of an NCB’s decision-making body should enable them to assume office following their election. Once elected or appointed, the Governor and the other members of the Governing Council of Българска народна банка (Bulgarian National Bank) may not be dismissed under conditions other than those mentioned in Article 14.2 of the Statute, even if they have not yet taken up their duties. Therefore, taking the above-mentioned case into account, the ECB reiterates that the Law on BNB should be revised to mirror the wording of Article 14.2 of the Statute and to provide specifically for a right of review of decisions removing members of Българска народна банка (Bulgarian National Bank) decision-making bodies from office.

### 7.1.3 Confidentiality

Article 4(2) of the Law on BNB provides that Българска народна банка (Bulgarian National Bank) may not disclose or pass to third parties any information obtained which is of a confidential banking or commercial nature for banks and the other participants in the money turnover and credit relations, except in the cases provided for by the Law on the protection of classified information. Under Article 23(2) of the

<sup>148</sup> See also Opinion CON/2009/13.



Law on BNB, the employees of Българска народна банка (Bulgarian National Bank) may not disclose any information concerning negotiations, contracts entered into, the level of assets on customers' deposits and their operations, information received by Българска народна банка (Bulgarian National Bank), as well as any circumstances concerning the activities of Българска народна банка (Bulgarian National Bank) or its customers which constitute official, banking, commercial or other secrecy protected by law, even after the termination of their contracts of employment. Under Article 37 of the Statute, professional secrecy is an ESCB-wide matter. Therefore, the ECB assumes that Articles 4(2) and 23(2) of the Law on BNB are without prejudice to the confidentiality obligations towards the ECB and the ESCB.

#### 7.1.4 Monetary financing and privileged access

Article 45(1) of the Law on BNB provides that Българска народна банка (Bulgarian National Bank) may not grant credits or guarantees in any form whatsoever, including through the purchase of debt instruments, to the Council of Ministers, municipalities, or to other government or municipal institutions, organisations and undertakings. Pursuant to Article 45(2) of the Law on BNB, this does not apply to the extension of credits to state-owned and municipal banks in emergency cases of liquidity risk that may affect the stability of the banking system. Article 45(1) and (2) of the Law on BNB need to be adjusted to be fully consistent with the Treaty. In particular, the range of public sector entities referred to in Article 45(1) of the Law on BNB needs to be extended to include central governments, regional, local or other public authorities, public undertakings and bodies governed by public law of other Member States and EU institutions and bodies to fully mirror the wording of Article 123 of the Treaty. Moreover, Article 45(1) of the Law on BNB needs to be slightly redrafted to ensure that it accurately reflects the prohibition of monetary financing to cover both (a) lending 'to' the range of public sector entities; and (b) purchases of debt instruments 'from' the range of public sector entities.

The prohibition of monetary financing prohibits the direct purchase of public sector debt, but such purchases in the secondary market are allowed, in principle, as long as such secondary market purchases are not used to circumvent the objective of Article 123 of the Treaty. For this reason the word 'direct' should be inserted in Article 45(1) of the Law on BNB.

Furthermore, while acknowledging the particularities arising out of the currency-board regime, i.e. prohibition on Българска народна банка (Bulgarian National Bank) extending credit to credit institutions other than in the context of emergency liquidity operations, it is recommended that the scope of the exemption addressed to publicly-owned credit institutions is brought into line with the scope of the exemption under the Treaty.

Pursuant to Article 56a(7) of the Law on credit institutions, several national law enforcement authorities and other public authorities, as well as the persons who represent them, which will have access to the bank account register operated by

Българска народна банка (Bulgarian National Bank), must pay a system access fee as determined by Българска народна банка (Bulgarian National Bank) based on expenditure incurred. Article 56a(7) of the Law on credit institutions needs to be adapted to provide sufficient safeguards to ensure that Българска народна банка (Bulgarian National Bank) is adequately remunerated for all the costs incurred in connection with both setting up and operating the bank account register.<sup>149</sup> The reimbursement of these costs should be made 'at arm's length,' i.e. on equal commercial terms, either in advance or on a regular and prompt basis as the costs arise.<sup>150</sup> In addition, in order to further ensure compatibility with the monetary financing prohibition, the Law on credit institutions would benefit from a limitation of Българска народна банка (Bulgarian National Bank)'s liability in relation to the operation of the bank account register.

## 7.1.5 Legal integration of the NCB into the Eurosystem

With regard to the legal integration of Българска народна банка (Bulgarian National Bank) into the Eurosystem, the Law on BNB needs to be adapted in the respects set out below.

### 7.1.5.1 Tasks

#### Monetary policy

Article 2(1) and Article 3, Article 16, items 4 and 5 and Articles 28, 30, 31, 32, 35, 38, 41 and 61 of the Law on BNB, which provide for the powers of Българска народна банка (Bulgarian National Bank) in the field of monetary policy and instruments for the implementation thereof, do not recognise the ECB's powers in this field.

Article 33 of the Law of BNB, which empowers Българска народна банка (Bulgarian National Bank) to enter into certain financial transactions, also fails to recognise the ECB's powers in this field.

#### Collection of statistics

Article 4(1) and Article 42 of the Law on BNB, which provide for the powers of Българска народна банка (Bulgarian National Bank) relating to the collection of statistics, do not recognise the ECB's powers in this field.

<sup>149</sup> In order to ensure compliance with the monetary financing prohibition, Българска народна банка (Bulgarian National Bank) needs to be adequately remunerated: (a) where a new task entrusted to Българска народна банка (Bulgarian National Bank) is either not a central bank task or does not facilitate the performance of such a task, and (b) where a new task is both linked to a government task and performed in the interest of the government.

<sup>150</sup> See paragraph 3.1.6 of Opinion CON/2015/46.

### Official foreign reserve management

Article 20(1) and Articles 28, 31 and 32 of the Law on BNB, which provide for the powers of Българска народна банка (Bulgarian National Bank) with regard to the management of official foreign reserves, do not recognise the ECB's powers in this field.

### Payment systems

Articles 2(4) and 40(1) of the Law on BNB, which provide for the powers of Българска народна банка (Bulgarian National Bank) with regard to the promotion of the smooth operation of payment systems, do not recognise the ECB's powers in this field.

### Issue of banknotes

Article 2(5), Article 16, item 9, and Articles 24 to 27 of the Law on BNB, which provide for the powers of Българска народна банка (Bulgarian National Bank) with regard to the issue of banknotes and coins, do not recognise the Council's and the ECB's powers in this field.

## 7.1.5.2 Financial provisions

### Appointment of independent auditors

Article 49(4) of the Law on BNB, which provides that the external auditor is appointed by the Governing Council for a term of three years on the basis of a procedure complying with the Law on public procurement, does not recognise the Council's and the ECB's powers under Article 27.1 of the Statute.

### Financial reporting

Article 16, item 11 and Articles 46 and 49 of the Law on BNB do not reflect the obligation to comply with the Eurosystem's regime for financial reporting of NCB operations, pursuant to Article 26 of the Statute.

## 7.1.5.3 Exchange rate policy

Articles 28, 31, 32 of the Law on BNB, which provide for the powers of Българска народна банка (Bulgarian National Bank) with regard to the exchange rate policy, do not recognise the Council's and the ECB's powers in this field.

#### 7.1.5.4 International cooperation

Article 5, Article 16, item 12 and Article 37(4) of the Law on BNB, which provide for the powers of Българска народна банка (Bulgarian National Bank) with regard to international cooperation, do not recognise the ECB's powers in this field.

#### 7.1.5.5 Miscellaneous

Articles 61 and 62 of the Law on BNB do not recognise the ECB's powers to impose sanctions.

#### 7.1.6 Conclusions

The Law on BNB, the Law on the prevention of conflicts of interest and the Law on credit institutions do not comply with all the requirements for central bank independence, the monetary financing prohibition, and legal integration into the Eurosystem. Bulgaria is a Member State with a derogation and must therefore comply with all adaptation requirements under Article 131 of the Treaty.

### 7.2 Czech Republic

#### 7.2.1 Compatibility of national legislation

The following legislation forms the legal basis for Česká národní banka and its operations:

- the Czech Constitution,<sup>151</sup>
- the Law on Česká národní banka (hereinafter the "Law on CNB").<sup>152</sup>

This year's assessment takes into account the relevant amendments made to the Law on CNB by Law No 135/2014 Coll., Laws No 204/2015 Coll. and 375/2015 Coll. and Law No 377/2015 Coll. amending Law No 6/1993 Coll. on Česká národní banka and other related laws.<sup>153</sup> It also takes into account Law No 78/2015 Coll., which has amended, inter alia, Article 23 of Law No 166/1993 Coll. on the Supreme Audit Office (hereinafter the "Law on NKU"). The comment regarding compliance of the Law on NKU with Article 37 of the Statute has been removed. Article 23 of the Law on NKU now provides that the duty of confidentiality of Česká národní banka laid down in Article 37 of the Statute remains unaffected by the first sentence of Article 23, which provides for exemptions from the duty of confidentiality.

<sup>151</sup> Constitutional law No 1/1993 Coll.

<sup>152</sup> Law No 6/1993 Coll.

<sup>153</sup> In respect of Laws No. 135/2014 and 375/2015, see Opinion CON/2015/22.

In relation to the points identified in the ECB's Convergence Report of June 2014 which were not addressed by the above amendments, the comments made in that report are largely repeated, with the exception set out below.

## 7.2.2 Independence of the NCB

The comment regarding compliance with the principle of financial independence has been removed. Česká národní banka was faced with accumulated losses that were higher than its capital and reserve levels, which have been carried over for several years. A negative capital situation may adversely affect an NCB's ability to perform its ESCB-related tasks as well as its national tasks. At the end of 2015, Česká národní banka had positive net equity.

With regard to Česká národní banka's independence, the Law on CNB needs to be adapted as set out below.

### 7.2.2.1 Functional independence

Article 2(1) of the Law on CNB provides that in addition to the primary objective of price stability, Česká národní banka's objective is "to ensure financial stability and the safe and sound operation of the financial system in the Czech Republic". In line with Article 127(1) of the Treaty, the secondary objective of Česká národní banka should be stated to be without prejudice to Česká národní banka's primary objective of maintaining price stability.

### 7.2.2.2 Institutional independence

Article 3 of the Law on CNB obliges Česká národní banka to submit a report on monetary development to the Chamber of Deputies at least twice a year for review; the Law on CNB also provides for an optional extraordinary report to be prepared pursuant to a Chamber of Deputies resolution. The Chamber of Deputies has the power to acknowledge the report or ask for a revised report; such a revised report must comply with the Chamber of Deputies' requirements. These parliamentary powers could potentially breach the prohibition on giving instructions to NCBs pursuant to Article 130 of the Treaty and Article 7 of the Statute.

In addition, Article 47(5) of the Law on CNB requires Česká národní banka to submit a revised report if the Chamber of Deputies rejects its annual financial report. This revised report must comply with the Chamber of Deputies' requirements. Such parliamentary powers breach the prohibition on approving, annulling or deferring decisions. Article 3 and Article 47(5) of the Law on CNB are therefore incompatible with central bank independence and should be adapted accordingly.

Further, Article 130 of the Treaty and Article 7 of the Statute are partially mirrored in the Law on CNB. Article 9(1) of the Law on CNB expressly prohibits Česká národní

banka and its Board from seeking or taking instructions from the President of the Republic, from Parliament, from the Government, from administrative authorities of the Czech Republic, from the bodies, institutions or other entities of the European Union, from governments of the Member States or from any other body, but it does not expressly prohibit the Government from seeking to influence the members of Česká národní banka's decision-making bodies in situations where this may have an impact on Česká národní banka's fulfilment of its ESCB-related tasks. In this respect the Law on CNB needs to be adapted to be fully consistent with Article 130 of the Treaty and Article 7 of the Statute.

Pursuant to the Law on NKU, as amended, the Supreme Audit Office (NKU) is empowered to audit Česká národní banka's financial management as regards its operating expenditure and expenditure for the purchase of property. The ECB understands that: (i) the NKU's auditing powers in relation to Česká národní banka are without prejudice to Article 9 of the Law on CNB, which concerns the general prohibition on Česká národní banka seeking or taking instructions from other entities; and (ii) the NKU has no power to interfere with either the external auditors' opinion or with Česká národní banka's ESCB-related tasks.

In so far as this understanding is correct, the NKU's auditing powers vis-à-vis Česká národní banka are not incompatible with central bank independence.

### 7.2.2.3 Personal independence

The Law on CNB, in particular Article 6, no longer refers to the Governor's right in case of dismissal to seek a remedy before the Court of Justice of the European Union in accordance with Article 14.2 of the Statute. The ECB understands that although the Law on CNB is now silent on the jurisdiction of the Court of Justice of the European Union to hear cases with regard to decisions to dismiss the Governor, Article 14.2 of the Statute applies.

The Law on CNB is also silent on the right of national courts to review a decision to dismiss any member, other than the Governor, of Česká národní banka's Board who is involved in the performance of ESCB-related tasks. Even though this right may be available under general law, providing specifically for such a right of review could increase legal certainty.

### 7.2.3 Monetary financing and privileged access

Under Article 33a of the Law on CNB, Česká národní banka, upon request, may provide the Financial Market Guarantee System (FMGS) with short-term credit guaranteed by government bonds or other securities underwritten by the Government and owned by the FMGS, for a maximum of three months, where the FMGS does not have sufficient funds to perform its tasks and this situation might jeopardise the stability of the financial market. Article 33a of the Law on CNB has no provision requiring Česká národní banka to provide temporary loans or other types of

repayable financial assistance in order to address an urgent situation. Even if such funding is discretionary, temporary and in the interests of financial stability, it should be expressly stipulated that the funding may be granted only in demonstrably urgent cases in order to be compatible with the monetary financing prohibition. Further, when exercising its discretion to grant a loan, Česká národní banka must ensure that it is not in effect taking over a government task. In particular, central bank support for deposit guarantee schemes should not amount to a systematic 'pre-funding' operation. For the reasons laid down in this paragraph, Article 33a of the Law on CNB should be amended to include more express safeguards in relation to the conditions under which Česká národní banka may finance the FMGS, in order to avoid incompatibility with the monetary financing prohibition under Article 123 of the Treaty.<sup>154</sup>

Article 34a of the Law on CNB aims at addressing defects highlighted in the ECB's Convergence Report in relation to the prohibition on monetary financing, but fails to provide for an exception to the monetary financing prohibition in favour of publicly owned credit institutions in the context of the supply of reserves. Article 34a(2) of the Law on CNB provides instead for an exception with reference to "publicly owned banks, foreign banks and credit unions". Article 34a(2) of the Law on CNB should be amended to reflect the text of Article 123(2) of the Treaty accordingly.

#### 7.2.4 Legal integration of the NCB into the Eurosystem

With regard to Česká národní banka's legal integration into the Eurosystem, the Law on CNB and Law No 2/1969 Coll., establishing ministries and other central administrative bodies of the Czech Republic (hereinafter the "Law on competences") need to be adapted as set out below.

##### 7.2.4.1 Economic policy objectives

Article 2(1) of the Law on CNB, the last sentence of which provides that without prejudice to its primary objective, Česká národní banka shall support the general economic policies of the Government leading to sustainable economic growth and the general economic policies in the EU with a view to contributing to the achievement of the objectives of the EU, is not fully compatible with Article 127(1) of the Treaty and Article 2 of the Statute. The Law on CNB should make it clear that the objective of financial stability and the objective of supporting the general economic policies of the Government leading to sustainable growth are subordinate not only to the primary objective of price stability as specified in Section 6.2.2.1 but also to the secondary objective of the ESCB.

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<sup>154</sup> See paragraphs 3.1.2 and 3.1.3 of CON/2015/22.

## 7.2.4.2 Tasks

### Monetary policy

Article 2(2)(a), Article 5(1) and Part Five (namely Articles 23 to 26) of the Law on CNB, which provide for Česká národní banka's powers in the field of monetary policy and instruments for the implementation thereof, do not recognise the ECB's powers in this field.

Articles 28, 29, 32 and 33 of the Law on CNB, which empower Česká národní banka to enter into certain financial transactions, also fail to recognise the ECB's powers in this field.

### Official foreign reserve management

Article 35(c) and Articles 36 and 47a of the Law on CNB, which provide for Česká národní banka's powers relating to foreign reserve management, do not recognise the ECB's powers in this field. Article 4(1) of the Law on competences, according to which the Ministry of Finance is the central administrative body for, inter alia, "foreign exchange affairs including the State's claims and obligations towards foreign entities" does not recognise the ECB's powers in this field.

### Payment systems

Article 2(2)(c) and Articles 38 and 38a of the Law on CNB, which provide for Česká národní banka's powers relating to the smooth operation of payment systems, do not recognise the ECB's powers in this field. Article 4(1) of the Law on competences, according to which the Ministry of Finance is the central administrative body for, inter alia, "payments systems", does not recognise the ECB's powers in this field.

### Issue of banknotes

Article 2(2)(b) of the Law on CNB, which empowers Česká národní banka to issue banknotes and coins, and Part Four of the Law on CNB, namely Articles 12 to 22, which specify Česká národní banka's powers in this field and the related implementing instruments, do not recognise the Council's and the ECB's powers in this field.



#### 7.2.4.3 Financial provisions

##### Appointment of independent auditors

Article 48(2) of the Law on CNB, which provides that Česká národní banka's annual financial statements are audited by auditors selected on the basis of an agreement between Česká národní banka's Board and the Minister for Finance, does not recognise the Council's and the ECB's powers under Article 27.1 of the Statute.

##### Financial reporting

Article 48 of the Law on CNB does not reflect Česká národní banka's obligation to comply with the Eurosystem's regime for financial reporting of NCB operations, pursuant to Article 26 of the Statute.

#### 7.2.4.4 Exchange rate policy

Article 35 of the Law on CNB, which authorises Česká národní banka to conduct exchange rate policy, does not recognise the Council's and the ECB's powers in this field. Article 4 of the Law on competences also fails to recognise the Council's and the ECB's powers in this field.

#### 7.2.4.5 International cooperation

Article 2(3) of the Law on CNB, which empowers Česká národní banka to cooperate and negotiate agreements with the central banks of other countries and international financial institutions, does not recognise the ECB's powers in this field.

#### 7.2.4.6 Miscellaneous

Article 37 of the Law on CNB, which provides for the respective legislative powers of Česká národní banka and the Ministry of Finance in areas relating, inter alia, to currency, the circulation of money, the financial market, the adoption of the euro in the Czech Republic, the payment system, foreign exchange management, and the status, competence, organisation and activities of Česká národní banka, does not recognise the Council's and the ECB's powers in this field.

Article 43e of the Law on CNB requires Česká národní banka to "ensure on-going protection of confidential statistical information obtained on the basis of this Law [...] so that such information is used for statistical purposes only". While Article 43f(1)(a) of the Law on CNB expressly allows Česká národní banka to provide confidential statistical information to another member of the ESCB to the extent and at the level of detail necessary to perform ESCB tasks, in compliance with Article 8(4)(a) of

Council Regulation (EC) No 2533/98,<sup>155</sup> Article 43e of the Law on CNB should be redrafted so as not to contradict Article 43f(1)a of that Law.

Article 46a of the Law on CNB, which sets out the sanctions against third parties which fail to comply with their statistical obligations, does not recognise the Council's and the ECB's powers to impose sanctions.

## 7.2.5 Conclusions

The Law on CNB and the Law on competences do not comply with all the requirements for central bank independence, the monetary financing prohibition and legal integration into the Eurosystem. The Czech Republic is a Member State with a derogation and must therefore comply with all adaptation requirements under Article 131 of the Treaty.

## 7.3 Croatia

### 7.3.1 Compatibility of national legislation

The following legislation forms the legal basis for Hrvatska narodna banka and its operations:

- the Croatian Constitution,<sup>156</sup>
- the Law on Hrvatska narodna banka (hereinafter the "Law on HNB").<sup>157</sup>
- There have been no changes in relation to the points identified in the ECB's Convergence Report of June 2014, and those comments are therefore repeated in this year's assessment.

### 7.3.2 Independence of the NCB

With regard to Hrvatska narodna banka's institutional independence, the Law on HNB needs to be adapted as set out below.

<sup>155</sup> 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).

<sup>156</sup> Constitution of the Republic of Croatia, OG 5/2014. - Decision of the Constitutional Court No SuP-O-2014 of 14 January 2014.

<sup>157</sup> Law on Hrvatska narodna banka OG 75/2008 of 01 July 2008. Amendments to the Law on Hrvatska narodna banka OG 54/2013 of 7 May 2013.

### 7.3.2.1 Institutional and personal independence

Article 71 of the Law on HNB partially mirrors Article 130 of the Treaty and Article 7 of the Statute. In particular Article 71(2) of the Law on HNB does not expressly prohibit the Croatian Government from seeking to influence the members of Hrvatska narodna banka's decision-making bodies in the performance of their tasks. In this respect the Law on HNB needs to be adapted to be fully consistent with Article 130 of the Treaty and Article 7 of the Statute.

### 7.3.3 Legal integration of the NCB into the Eurosystem

With regard to the legal integration of Hrvatska narodna banka into the Eurosystem, the Law on HNB needs to be adapted in the respects set out below.

#### 7.3.3.1 International cooperation

Pursuant to Article 104(11) of the Law on HNB, the Hrvatska narodna banka's Council decides on Hrvatska narodna banka's membership of international institutions and organisations. The ECB understands that this power of the Hrvatska narodna banka's Council is without prejudice to the ECB's powers under Article 6(1) of the Statute.

### 7.3.4 Conclusions

The Law on HNB does not comply with all the requirements for central bank independence. Croatia is a Member State with a derogation and must therefore comply with all adaptation requirements under Article 131 of the Treaty.

## 7.4 Hungary

### 7.4.1 Compatibility of national legislation

The following legislation forms the legal basis for the Magyar Nemzeti Bank and its operations:

- The consolidated version of the Fundamental Law of Hungary,<sup>158</sup>
- Law CXXXIX of 2013 on the Magyar Nemzeti Bank (hereinafter the "Law on the MNB").<sup>159</sup>

<sup>158</sup> Magyarország Alaptörvénye, Magyar Közlöny 2013/163. (X.3.).

There have been no major changes in relation to the points identified in the ECB's Convergence Report of June 2014, and those comments are therefore repeated in this year's assessment. In relation to the Law on the MNB, and the number and combined effects of amendments to the Law on the MNB, which has been amended more than ten times since the ECB's Convergence Report of June 2014, there are additional points made in this year's assessment.

## 7.4.2 Independence of the NCB

With regard to the Magyar Nemzeti Bank's independence, the Law on the MNB and Law XXVII of 2008<sup>160</sup> need to be adapted as set out below.

### 7.4.2.1 Institutional independence

The legislation and institutional framework regarding the Magyar Nemzeti Bank have been changed many times over the course of the past years.<sup>161</sup> The latest recast of the Law on the MNB, which entered into force on 1 October 2013, resulted in the integration of the Hungarian Financial Supervisory Authority (HFSA) into the Magyar Nemzeti Bank as a general legal successor to the HFSA's scope of competence, rights and obligations.<sup>162</sup> Further recent amendments concerned the allocation of new tasks to the Magyar Nemzeti Bank, such as: resolution tasks<sup>163</sup>; supervisory tasks involving the verification of compliance with the new legal measures applicable to consumer loan contracts<sup>164</sup>; mediation of complaints and the initiation of legal proceedings in the public interest.<sup>165</sup> The combination of the changes to the institutional framework of the Magyar Nemzeti Bank and the frequency of changes to the Law on the MNB, not always backed by robust justification for the need to amend the Magyar Nemzeti Bank's institutional framework, adversely affect the organisational and governance stability of the Magyar Nemzeti Bank and impact its institutional independence. The principle of central bank independence requires that a central bank has a stable legal framework to enable it to function.

<sup>159</sup> 2013. évi CXXXIX. törvény a Magyar Nemzeti Bankról, Magyar Közlöny 2013/158. (IX.26.). Law CXXXIX of 2013 on the Magyar Nemzeti Bank repealed Law CCVIII of 2011 on the Magyar Nemzeti Bank with effect from 1 October 2013. See Opinions CON/2013/56 and CON/2013/71.

<sup>160</sup> Law XXVII of 2008 on the oath of certain public officials.

<sup>161</sup> There have been several changes in the institutional framework for the Magyar Nemzeti Bank as identified in the ECB's Convergence Report of June 2014, Chapter 6.5, p. 245, footnote 44. In addition to the changes referred to in the Convergence Report of June 2014, there have been further changes in the institutional framework for the Magyar Nemzeti Bank as follows. In 2014 Law XVI of 2014 made further amendments to the Law on the Magyar Nemzeti Bank. Further legislative amendments to the Law on the MNB were introduced by Law XVI of 2014, Law XXV of 2014, Law XXXVII of 2014, Law CI of 2014, Law CIV of 2014, Law XXXIX of 2015, Law LXXXV of 2015, Law CI of 2015, Law CLXII of 2015, Law CCXIV of 2015 and Law CCXV of 2015.

<sup>162</sup> See Articles 176 to 183 of the Law on the MNB as well as ECB Opinions CON/2013/56 and CON/2013/71.

<sup>163</sup> Law XXXVII of 2014.

<sup>164</sup> Law XL of 2014.

<sup>165</sup> Law XL of 2014 and Law LXXXV of 2015.

#### 7.4.2.2 Personal independence

The ECB's Convergence Reports of 2010, 2012 and 2014 noted that Law XXVII of 2008 specifies the wording of the oath that the members of the Monetary Council – including the Governor – are required to take. Pursuant to Article 9(7), in conjunction with Articles 10(3) and 11(2) of the Law on the MNB which entered into force on 1 October 2013, the Governor and the Deputy Governors of the Magyar Nemzeti Bank must take an oath before Hungary's President, while other members of the Monetary Council 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>166</sup> Therefore, it is not clear whether the Governor and Deputy Governors take the same oath as the other members of the Monetary Council.

The Magyar Nemzeti Bank's Governor acts in a dual capacity as a member of both the Magyar Nemzeti Bank's Monetary Council and the ECB decision-making bodies. The wording of the oath should take into account and reflect the status, obligations and duties of the 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 taken should not hinder the Governor, Deputy Governors and other members of the Monetary Council from performing ESCB-related tasks. Law XXVII of 2008 and Articles 9(7), 10(3) and 11(2) of the Law on the MNB need to be adapted in this regard.<sup>167</sup>

In addition, in accordance with Article 152(2) of the Law on the MNB, by way of exception from the general rule laid down in Article 152(1), all employees of the Magyar Nemzeti Bank, including the members of the Monetary Council, may: (1) hold membership of any kind in some but not all of the entities<sup>168</sup> subject to the Magyar Nemzeti Bank's supervisory powers, which fall under the scope of the laws enumerated in Article 39 of the Law on the MNB<sup>169</sup>; (2) have an employment relationship or any other work-related relationship, including by being executive officer or a supervisory board member, in a financial institution in which the Magyar

<sup>166</sup> Law XXVII of 2008 on the oath of certain public officials. The wording of the oath is: "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 a ... [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!"

<sup>167</sup> Law XXVII of 2008 was amended by Law XIV of 2014, but these changes do not affect the assessment of the Hungarian law laid down in this section.

<sup>168</sup> These entities are voluntary mutual insurance funds, private pension funds, cooperative credit institutions and insurance associations.

<sup>169</sup> These acts are as follows: (a) the Law on voluntary mutual insurance funds; (b) the Law on the Hungarian Export-Import Bank Corporation and the Hungarian Export Credit Insurance Corporation; (c) the Law on credit institutions and financial enterprises; (d) the Law on home savings and loan associations; (e) the Law on mortgage loan companies and mortgage bonds; (f) the Law on private pensions and Private Pension Funds; (g) the Law on the Hungarian Development Bank Limited Company; (h) the Law on credit institutions and financial enterprises; (i) the Law on the capital markets; (j) the Law on insurance institutions and the insurance business; (k) the Law on the distance marketing of consumer financial services; (l) the Law on occupational retirement pensions and institutions for occupational retirement provision; (m) the Law on investment firms and commodity dealers, and on the regulations governing their activities; (n) the Law on collective investment trusts and their managers, and on the amendment of financial regulations; (o) the Law on reinsurance; (p) the Law on the pursuit of the business of payment services; (q) the Law on insurance against civil liability in respect of the use of motor vehicles; (r) the Law on the central credit information system; (s) the Law on settlement finality in payment and securities settlement systems; (t) the Law on payment service providers.

Nemzeti Bank holds shares; and (3) be a supervisory board member of a non-profit business association the purpose of which is the resolution of entities subject to Article 39. In addition, pursuant to Article 153(1) of the Law on the MNB, employees of the Magyar Nemzeti Bank, including the members of the Monetary Council, performing the Magyar Nemzeti Bank's basic tasks can maintain an employment relationship, including by being an executive officer or a supervisory board member, with financial institutions owned by the Magyar Nemzeti Bank. Furthermore, pursuant to Article 153(6) of the Law on the MNB<sup>170</sup>, by way of exception from Article 152, Article 153(1) to (5) and Articles 154 to 156 of the Law on the MNB, the members of the Monetary Council may, without being subject to a formal disclosure requirement (unless it amounts to an employment relationship), be an executive officer or a member of a supervisory board of a business association under the majority ownership of the Magyar Nemzeti Bank, as well as a member of the management, board of trustees or supervisory board of a foundation established by the Magyar Nemzeti Bank. On the basis that it gives rise to potential conflicts of interest, the exception provided for in Article 152(2) - in conjunction with Article 153(1) - and Article 153(6) of the Law on the MNB should be removed in relation to the entities subject to the Magyar Nemzeti Bank's supervisory powers that fall under the scope of the laws enumerated in Article 39 of the Law on the MNB, in order to safeguard the personal independence of the members of the Monetary Council. Furthermore, in relation to entities that are not subject to the Magyar Nemzeti Bank's supervisory powers and do not fall under the scope of the laws enumerated in Article 39 of the Law on the MNB, it should be clarified that the memberships or relationships specified in the abovementioned provisions of the Law on the MNB are not permitted if they give rise to a conflict of interest.

In addition, Article 156(7) of the Law on the MNB in conjunction with Article 152(1), sets out post-employment conflict of interest rules for the members of the Monetary Council. It provides the members of the Monetary Council with an exemption from the cooling-off period of six months with regard to any membership or shareholder relationship, employment relationship or work-related contractual relationship, executive officer relationship or supervisory board membership with any of the entities subject to the Magyar Nemzeti Bank's supervisory powers, which fall under the scope of the laws enumerated in Article 39 of the Law on the MNB and in which the Hungarian State or the Magyar Nemzeti Bank has a majority stake.<sup>171</sup> Providing for such an exemption may give rise to potential conflicts of interest for the members of the Monetary Council. In order to safeguard those members' personal independence, the exemption from the post-employment restrictions provided for in Article 156(7) of the Law on the MNB should be removed as regards the entities subject to the Magyar Nemzeti Bank's supervisory powers and should be amended to clarify that such membership is not permitted if it gives rise to a conflict of interest as regards the other entities covered by Article 156(7) of the Law on the MNB.

<sup>170</sup> As introduced by Law LXXXV of 2015 on amendments to specific acts in order to enhance the development of the system of financial intermediation, 2015. évi LXXXV.

<sup>171</sup> Introduced to Article 156(7) of the Law CXXXIX of 2013 by Article 174 of Law LXXXV of 2015.

Article 157 of the Law on the MNB defines the rules that members of the Monetary Council must abide by when submitting their declarations of wealth. The Governor and the Deputy Governors must also follow these rules, by reference to the application of the provisions laid down in Law XXXVI of 2012 on the Parliament governing the declaration of wealth of members of the Parliament and related proceedings. Pursuant to Article 90(3) of Law XXXVI of 2012, which applies to the members of the Monetary Council by virtue of Article 157(2) of the Law on the MNB, in the case of non-compliance with the obligation to submit a declaration of wealth, the members of the Monetary Council will be prohibited from carrying out their duties and, as a consequence, they will not be entitled to receive their remuneration for the period of non-compliance. The sanction provided for in Article 90(3) of Law XXXVI of 2012 in effect allows the members of the Monetary Council to be temporarily removed from office for grounds other than those pursuant to Article 14.2 of the Statute. The provisions of Article 157(2) of the Law on the MNB should be adapted so that that the members of the Monetary Council may not be dismissed for reasons other than those laid down in Article 14.2 of the Statute.<sup>172</sup>

#### 7.4.2.3 Financial independence

Article 183 read in conjunction with Article 176 of the Law on the MNB provides that on 1 October 2013 all employees of the HFSA are to be employees of the Magyar Nemzeti Bank and that the Magyar Nemzeti Bank is to bear the financial obligations arising from any employment relations which HFSA staff transferred to the Magyar Nemzeti Bank may have had with the HFSA in the past. This provision alone, taken together with the mass redundancy scheme provided for under Article 183(10) of the Law on the MNB and the aim of eliminating positions not essential for the discharge of duties in order to optimise staff management, is incompatible with the Magyar Nemzeti Bank's financial independence and more specifically its autonomy in staff matters. It impedes the Magyar Nemzeti Bank's ability to decide on employing and retaining necessary and qualified staff for the Magyar Nemzeti Bank. See, also, the following Section regarding compatibility with the prohibition on monetary financing.

As noted in the section on institutional independence, recently the Magyar Nemzeti Bank has been entrusted with several new tasks. The legal provisions entrusting the Magyar Nemzeti Bank with several new tasks that require additional human and financial resources within a relatively short period of time may be seen as an instrument to influence the Magyar Nemzeti Bank's ability to fulfil its mandate, both operationally and financially. Therefore, this raises concerns as regards the provisions' compliance with the principle of financial independence. Any allocation of new tasks should be supplemented by provisions regarding the necessary resources to carry them out.<sup>173</sup>

<sup>172</sup> See paragraphs 2.3 to 2.5 of the Opinion CON/2014/8.

<sup>173</sup> See paragraph 2.2 of Opinion CON/2014/62 and paragraph 3.4 of Opinion CON/2014/72.

### 7.4.3 Monetary financing and privileged access

Article 36 of the Law on the MNB provides that if circumstances arise which jeopardise the financial system's stability due to a credit institution's operations, the Magyar Nemzeti Bank may extend an emergency loan to such credit institution subject to observing the prohibition on monetary financing in Article 146 of the Law on the MNB. However, it would be useful to specify that such loans are granted independently and at the Magyar Nemzeti Bank's full discretion, which may make such extensions conditional if necessary and against adequate collateral, thus introducing an additional safeguard which should minimise the possibility of the Magyar Nemzeti Bank suffering any loss.

Article 37 of the Law on the MNB provides that on request, the Magyar Nemzeti Bank at its full discretion may provide a loan to the National Deposit Insurance Fund, subject to the prohibition on monetary financing in Article 146 of the Law on the MNB, in urgent and exceptional cases threatening the stability of the financial system as a whole and the smooth completion of cash transactions, the term of which loan may not be longer than three months. Law LXXXV of 2015 extended the scope of Article 37 in order to enable such emergency short-term loan facilities to be provided to the Hungarian Investor Protection Fund, under the same conditions as to the National Deposit Insurance Fund. This provision is compatible with the monetary financing prohibition. As also already clarified in ECB opinions,<sup>174</sup> it may be useful to specify that such loans are extended against adequate collateral, thus introducing an additional safeguard which should minimise the possibility of the Magyar Nemzeti Bank suffering any loss.

The integration of the HFSA into the Magyar Nemzeti Bank took place on 1 October 2013. Based on Articles 176 to 181 of the Law on the MNB, all of the HFSA's assets were transferred to the Magyar Nemzeti Bank. The Magyar Nemzeti Bank also became a general legal successor to all obligations of the HFSA including, inter alia, its contractual relationships, pending procurement procedures, out-of-court redress procedures, tax-related administrative procedures as well as any other type of legal procedure (including pending administrative legal procedures)<sup>175</sup>. As a consequence, any payment obligation from a legal relationship or a requirement to pay compensation following any judgment handed down by a Hungarian court granting compensation to an individual or entity challenging a prior decision of the HFSA will have to be borne by the Magyar Nemzeti Bank.

Although Article 177(6) of the Law on the MNB provides for compensation by the State to the Magyar Nemzeti Bank for all expenses resulting from the above-mentioned obligations which exceed the assets taken over from the HFSA, the Law on the MNB does not specifically lay down the procedure and deadlines applicable to financing by the State and reimbursement of the Magyar Nemzeti Bank. This can only be considered to be an ex-post financing scheme. The provisions applying to the assignment of the obligations of the HFSA to the Magyar Nemzeti Bank are not

<sup>174</sup> See, for example, paragraph 9.3 of Opinion CON/2011/104.

<sup>175</sup> See also footnote 42.



accompanied by measures that would fully insulate the Magyar Nemzeti Bank from all financial obligations resulting from any activities and contractual relationships of the HFSA originating prior to the transfer of tasks, and the current provisions of the Law on the MNB involve a time gap between the costs arising and the Hungarian State reimbursing the Magyar Nemzeti Bank, should the expenses incurred at the Magyar Nemzeti Bank exceed the value of assets taken over from the HFSA. Such a scenario would constitute a breach of the prohibition on monetary financing laid down in Article 123 of the Treaty as well as of the principle of financial independence under Article 130. Hence the Magyar Nemzeti Bank must be insulated from all financial obligations resulting from the prior activities or legal relationships of the HFSA.

Article 183 of the Law on the MNB read in conjunction with Article 176 of the Law on the MNB provides that the Magyar Nemzeti Bank bears the financial obligations arising from the employment relationships which HFSA staff transferred to the Magyar Nemzeti Bank may have had with the HFSA in the past. In order to comply with Article 123 of the Treaty, the Magyar Nemzeti Bank should be insulated from all obligations arising out of employment relationships between any new Magyar Nemzeti Bank staff member and the HFSA, in light of the mass redundancy scheme provided for under Article 183(10) of the Law on the MNB.

In addition, the ECB in the 2015 Annual Report<sup>176</sup> addresses some other monetary financing concerns in relation to the activities and operations of the Magyar Nemzeti Bank.

#### 7.4.4 Single spelling of the euro

In several Hungarian legal acts<sup>177</sup> the name of the single currency is spelled in a way ("euró"), which is inconsistent with EU law. Under the Treaties a single spelling of the word "euro" in the nominative singular case is required in all EU and national legislative provisions, taking into account the existence of different alphabets. The Hungarian legal acts in question should therefore be amended accordingly.<sup>178</sup>

The ECB expects that the correct spelling of the word "euro" will be applied in Hungarian legal acts and the euro changeover law. Only when all national legal acts use the correct spelling of the word "euro" will Hungary comply with the Treaties.

#### 7.4.5 Legal integration of the NCB into the Eurosystem

With regard to the Magyar Nemzeti Bank's legal integration into the Eurosystem, the Law on the MNB needs to be adapted as set out below.

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<sup>176</sup> Published on the ECB's website.

<sup>177</sup> For example, the Laws on the 2015 general budget in Hungary.

<sup>178</sup> Opinion CON/2006/55.

#### 7.4.5.1 Economic policy objectives

Article 3(2) of the Law on the MNB provides that the Magyar Nemzeti Bank supports, without prejudice to the primary objective of price stability, the maintenance of the stability of the financial intermediary system, the enhancement of its resilience, its sustainable contribution to economic growth and the Government's general economic policies. This provision is incompatible with Article 127(1) of the Treaty and Article 2 of the Statute as it does not reflect the secondary objective of supporting the general economic policies in the EU.

#### 7.4.5.2 Tasks

##### Monetary policy

Article 41 of the Fundamental Law of Hungary and Articles 1(2), 4, 9, 16 to 22, 159 and 171 of the Law on the MNB establishing the Magyar Nemzeti Bank's powers in the field of monetary policy and instruments for the implementation thereof do not recognise the ECB's powers in this field.

##### Collection of statistics

Although Article 4(7) of the Law on the MNB refers to the Magyar Nemzeti Bank's obligation to transfer specific statistical data to the ECB in accordance with Article 5 of the Statute, Article 1(2), as well as Articles 30 and 171(1) of the Law on the MNB establishing the Magyar Nemzeti Bank's powers relating to the collection of statistics do not recognise the ECB's powers in this field.

##### Official foreign reserve management

Article 1(2), Article 4(3), (4) and (12), Article 9 and Article 159(2) of the Law on the MNB, which provide for the Magyar Nemzeti Bank's powers in the field of foreign reserve management, do not recognise the ECB's powers in this field.

##### Payment systems

Article 1(2), Article 4(5) and (12), Articles 27 and 28, and Article 171(2) and (3) of the Law on the MNB establishing the Magyar Nemzeti Bank's powers with regard to the promotion of the smooth operation of payment systems do not recognise the ECB's powers in this field.

### Issue of banknotes

Article K of the Fundamental Law and Article 1(2), Article 4(2) and (12), Articles 9, 23 to 26 and Article 171(1) of the Law establishing the Magyar Nemzeti Bank's exclusive right to issue banknotes and coins do not recognise the Council's and the ECB's powers in this field.

#### 7.4.5.3 Financial provisions

##### Appointment of independent auditors

Article 144 of the Law on the MNB providing that the President of the State Audit Office must be consulted before the Magyar Nemzeti Bank's auditor is elected or his or her dismissal is proposed, Article 6(1) of the Law on the MNB, which provides for the shareholder's power to appoint and dismiss the auditor, and Article 15 of the Law on the MNB do not recognise the Council's and the ECB's powers under Article 27.1 of the Statute.

##### Financial reporting

Article 12(4)(b) of the Law on the MNB and Law C of 2000,<sup>179</sup> in conjunction with Government Decree 221/2000 (XII.19),<sup>180</sup> do not reflect the Magyar Nemzeti Bank's obligation to comply with the Eurosystem's regime for financial reporting of NCB operations, pursuant to Article 26 of the Statute.

#### 7.4.5.4 Exchange rate policy

Article 1(2), 4(4) and (12), Articles 9, 22 and 147 of the Law on the MNB lay down the Government's and the Magyar Nemzeti Bank's respective powers in the area of exchange rate policy. These provisions do not recognise the Council's and the ECB's powers in this field.

#### 7.4.5.5 International cooperation

Article 1(2), 135(5) of the Law on the MNB providing that, upon authorisation by the Government, the Magyar Nemzeti Bank may undertake tasks arising at international financial organisations, unless otherwise provided for by a legislative act, fails to

<sup>179</sup> A számvitelről szóló törvény, Magyar Közlöny 2000/95. (IX. 21.).

<sup>180</sup> A Magyar Nemzeti Bank éves beszámoló készítési és könyvvizetési kötelezettségének sajátosságairól szóló kormányrendelet, Magyar Közlöny 2000/125. (XII. 19.).

recognise the ECB's powers as far as issues under Article 6 of the Statute are concerned.

#### 7.4.5.6 Miscellaneous

Articles 75 and 76 of the Law on the MNB do not recognise the ECB's powers to impose sanctions.

With regard to Article 132 of the Law on the MNB, which entitles the Magyar Nemzeti Bank to be consulted on draft national legislation related to its tasks, it is noted that consulting the Magyar Nemzeti Bank does not obviate the need to consult the ECB under Articles 127(4) and 282(5) of the Treaty.

As set out in Section 6.5.2.2, Article 9(7) of the Law on the MNB requires the members of the Monetary Council to make an oath in accordance with the wording specified in Article 1 of Law XXVII of 2008. Article 9(7) of the Law on the MNB needs to be adapted to comply with Article 14.3 of the Statute.<sup>181</sup>

#### 7.4.6 Conclusions

The Fundamental Law of Hungary, the Law on the MNB and Law XXVII of 2008 do not comply with all the requirements for central bank independence, the prohibition on monetary financing, and legal integration into the Eurosystem. Other Hungarian legal acts do not comply with the requirements for the single spelling of the euro. Hungary is a Member State with a derogation and must therefore comply with all adaptation requirements under Article 131 of the Treaty.

### 7.5 Poland

#### 7.5.1 Compatibility of national legislation

The following legislation forms the legal basis for Narodowy Bank Polski and its operations:

- the Polish Constitution,<sup>182</sup>
- the Law on Narodowy Bank Polski (hereinafter the "Law on NBP"),<sup>183</sup>
- the Law on the Bank Guarantee Fund,<sup>184</sup>

<sup>181</sup> See paragraph 3.7 of Opinion CON/2008/83.

<sup>182</sup> Konstytucja Rzeczypospolitej Polskiej of 2 April 1997, Dziennik Ustaw of 1997, No 78, item 483.

<sup>183</sup> Ustawa o Narodowym Banku Polskim of 29 August 1997. Consolidated version published in Dziennik Ustaw of 2013, item 908, with further amendments.

- the Law on banking (hereinafter the “Law on banking”),<sup>185</sup>
- the Law on settlement finality in the payment and settlement systems and on the supervision of such systems.<sup>186</sup>

No major new legislation has been enacted in relation to the points identified in the ECB’s Convergence Report of June 2014, and those comments are therefore largely repeated in this year’s assessment.

## 7.5.2 Independence of the NCB

With regard to Narodowy Bank Polski’s independence, the Polish Constitution, the Law on NBP and the Law on the State Tribunal<sup>187</sup> need to be adapted in the respects set out below.

### 7.5.2.1 Institutional independence

The Law on NBP does not prohibit Narodowy Bank Polski and members of its decision-making bodies from seeking or taking outside instructions; it also does not expressly prohibit the Government from seeking to influence members of Narodowy Bank Polski’s decision-making bodies in situations where this may have an impact on Narodowy Bank Polski’s fulfilment of its ESCB-related tasks. In this respect, the Law on NBP needs to be adapted to comply with Article 130 of the Treaty and Article 7 of the Statute. Furthermore, the Polish Constitutional Court has confirmed<sup>188</sup> that, while the Polish Constitution does not expressly lay down the principle of Narodowy Bank Polski’s central bank independence, such principle can be implicitly derived from the Constitution’s provisions relating to Narodowy Bank Polski. Making explicit provision for this principle in the Polish Constitution on the occasion of a future amendment could increase legal certainty.

Article 11(3) of the Law on NBP, which provides that Narodowy Bank Polski’s President represents Poland’s interests within international banking institutions and, unless the Council of Ministers decides otherwise, within international financial institutions, needs to be adapted to comply with Article 130 of the Treaty and Article 7 of the Statute.

<sup>184</sup> Ustawa o Bankowym Funduszu Gwarancyjnym of 14 December 1994. Consolidated version published in Dziennik Ustaw of 2014, item 1866, with further amendments.

<sup>185</sup> Ustawa Prawo bankowe of 29 August 1997. Consolidated version published in Dziennik Ustaw of 2015, item 128, with further amendments.

<sup>186</sup> Ustawa o ostateczności rozrachunku w systemach płatności i systemach rozrachunku papierów wartościowych oraz zasadach nadzoru nad tymi systemami of 24 August 2001. Consolidated version published in Dziennik Ustaw of 2013, item 246, with further amendments.

<sup>187</sup> Ustawa o Trybunale Stanu of 26 March 1982; consolidated version published in Dziennik Ustaw of 2002, No 101, item 925, with further amendments.

<sup>188</sup> Judgment of 16 July 2009 of the Polish Constitutional Court. Kp 4/08.

Article 23(1)(2) of the Law on NBP, which obliges Narodowy Bank Polski's President to forward draft monetary policy guidelines to the Council of Ministers and the Minister for Finance, needs to be adapted to comply with Article 130 of the Treaty and Article 7 of the Statute.

The Supreme Audit Office (NIK), a constitutional body, has wide powers under Article 203(1) of the Polish Constitution to control the activities of all public administrative authorities and Narodowy Bank Polski as regards their legality, economic prudence, efficiency and diligence. The scope of the NIK's control should be clearly defined, should be without prejudice to the activities of Narodowy Bank Polski's independent external auditors,<sup>189</sup> should comply with the prohibition on giving instructions to an NCB and its decision-making bodies and should not interfere with the NCB's ESCB-related tasks. In particular, it should be ensured that when auditing Narodowy Bank Polski, the application by the NIK of the "efficacy criterion" does not extend to an evaluation of Narodowy Bank Polski's activities related to its primary objective of price stability.<sup>190</sup> Article 203(1) of the Constitution needs to be adapted to comply with Article 130 of the Treaty and Article 7 of the Statute.

#### 7.5.2.2 Personal independence

Article 9(5) of the Law on NBP regulates the dismissal of Narodowy Bank Polski's President by the Sejm (lower house of Parliament), if he or she has:

- been unable to fulfil his or her duties due to prolonged illness,
- been convicted of a criminal offence under a final court sentence,
- submitted an untruthful disclosure declaration, confirmed by a final court judgment,<sup>191</sup>
- been prohibited by the State Tribunal from occupying executive positions or holding posts of particular responsibility in state bodies.<sup>192</sup>

Moreover, under Article 25(3) in conjunction with Article 3 and Article 1(1)(3) of the Law on the State Tribunal, Narodowy Bank Polski's President may also be removed from office if he or she violates the Constitution or a law.<sup>193</sup>

<sup>189</sup> For the activities of the NCB's independent external auditors see, as an example, Article 27.1 of the Statute.

<sup>190</sup> See paragraph 3.6 of Opinion CON/2011/9.

<sup>191</sup> The provision was added with effect from 15 March 2007 by Article 37a of the Law on disclosure of information relating to documents of state security services from the period 1944-1990 (Ustawa o ujawnianiu informacji o dokumentach organów bezpieczeństwa państwa z lat 1944-1990 oraz treści tych dokumentów of 18 October 2006; consolidated version published in Dziennik Ustaw of 2007, No 63, item 425).

<sup>192</sup> The resolution of the Sejm producing an indictment of the President of Narodowy Bank Polski before the State Tribunal results, by operation of law, in suspension of the President from office (Article 11(1), second sentence in connection with Article 1(1)(3) of the Law on the State Tribunal).

<sup>193</sup> The indictment by the Sejm of the President of Narodowy Bank Polski before the State Tribunal results, by operation of law, in suspension of the President from office, see previous footnote.

The grounds listed above are in addition to the two grounds for dismissal provided for in Article 14.2 of the Statute. Therefore, Article 9(5) of the Law on NBP and the relevant provisions of the Law on the State Tribunal need to be adapted to comply with Article 14.2 of the Statute.

With regard to security of tenure and grounds for dismissal of other members of Narodowy Bank Polski's decision-making bodies involved in the performance of ESCB-related tasks (i.e. the members of the Management Board, and in particular the First Deputy President, and the members of the Monetary Policy Council), Article 13(5) and Article 17(2b), second sentence, of the Law on NBP provide the following grounds for dismissal:

- an illness which permanently prevents them from performing their responsibilities,
- a conviction for a criminal offence under a final court sentence,
- submission of an untruthful disclosure declaration as confirmed by a final court judgment,<sup>194</sup>
- non-suspension of membership of a political party or trade union.

The grounds listed above are in addition to the two grounds for dismissal provided for in Article 14.2 of the Statute. Article 13(5) of the Law on NBP therefore needs to be adapted to comply with Article 14.2 of the Statute. Article 14(3) of the Law on NBP, which reaffirms the possibility of dismissal of a member of the Monetary Council of Narodowy Bank Polski for a conviction for a criminal offence, needs also to be adapted to comply with Article 14.2 of the Statute.

The President of Narodowy Bank Polski acts in dual capacity as a member of Narodowy Bank Polski's decision-making bodies and of the relevant decision-making bodies of the ECB. Article 9(3) of the Law on NBP, which specifies the wording of the oath sworn by Narodowy Bank Polski's President, needs to be adapted to reflect the status and the obligations and duties of the President of Narodowy Bank Polski as member of the relevant decision-making bodies of the ECB.

The Law on NBP is silent on the right of national courts to review a decision to dismiss any member, other than the President, of the NCB's decision-making bodies who is involved in the performance of ESCB-related tasks. Even though this right may be available under general Polish law, providing specifically for such a right of review could increase legal certainty.

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<sup>194</sup> This provision was added with effect from 15 March 2007 by Article 37a of the Law on disclosure of information relating to documents of state security services from the period 1944-1990 (Ustawa o ujawnianiu informacji o dokumentach organów bezpieczeństwa państwa z lat 1944-1990 oraz treści tych dokumentów of 18 October 2006; consolidated version published in Dziennik Ustaw of 2007, No 63, item 425).

### 7.5.3 Confidentiality

Article 23(7) of the Law on NBP specifies instances in which data collected from individual financial institutions, as well as statistical surveys, studies and assessments enabling identification of individual entities, are subject to disclosure by Narodowy Bank Polski to external parties. One such instance covers disclosure to 'unspecified recipients', under "separate applicable provisions".<sup>195</sup> Such disclosure may potentially affect data protected under the ESCB's confidentiality regime and therefore the Law on NBP should be adapted to fully comply with Article 37 of the Statute.<sup>196</sup>

In addition, since NIK has wide powers under Article 203(1) of the Polish Constitution to control the activities of Narodowy Bank Polski, as mentioned in Chapter 7.5.2.1, NIK also has wide access to Narodowy Bank Polski's confidential information and documents. However, pursuant to Article 37 of the Statute in conjunction with Article 130 of the Treaty, NIK's access to Narodowy Bank Polski's confidential information and documents must be limited to that necessary for the performance of NIK's statutory tasks. Such access must also be without prejudice both to the ESCB's independence and to its confidentiality regime, to which the members of the NCBs' decision-making bodies and staff are subject. In addition, the relevant Polish legislation should be amended to stipulate that NIK shall safeguard the confidentiality of information and documents disclosed by Narodowy Bank Polski to an extent corresponding to that applied by Narodowy Bank Polski.

### 7.5.4 Monetary financing and privileged access

Article 42(1) in conjunction with Article 3(2)(5) of the Law on NBP provides for Narodowy Bank Polski's powers to grant refinancing credit to banks satisfying specified conditions.<sup>197</sup> In addition, Article 42(3) of the Law on NBP allows Narodowy Bank Polski to grant refinancing credit for the purpose of implementing bank rehabilitation proceedings, which are initiated in the event of a bank suffering a net loss, being threatened with such a loss or insolvency.<sup>198</sup> Granting of refinancing credit is in all cases subject to the general rules of the Law on banking, with the modifications resulting from the Law on NBP.<sup>199</sup> Safeguards currently contained in such rules aiming at ensuring timely repayment of the credit do not fully exclude an interpretation that would allow an extension of refinancing credit to a bank

<sup>195</sup> Article 23(7)(3) of the Law on NBP.

<sup>196</sup> See Opinion CON/2008/53.

<sup>197</sup> Narodowy Bank Polski's decision whether to grant refinancing credit is based on its assessment of the bank's ability to repay the principal amount and the interest on time (Article 42(2) of the Law on NBP).

<sup>198</sup> Article 142(1) of the Law on banking.

<sup>199</sup> Article 42(7) of the Law on NBP.



undergoing rehabilitation proceedings which then becomes insolvent.<sup>200</sup> More explicit safeguards in relation to all financial institutions receiving liquidity support from Narodowy Bank Polski are needed to avoid incompatibility with the monetary financing prohibition under Article 123 of the Treaty.<sup>201</sup> The Law on NBP should be adapted to make clear that such liquidity support is only temporary and it may not be extended to insolvent financial institutions. Article 220(2) of the Polish Constitution provides that “the budget shall not provide for covering a budget deficit by way of contracting credit obligations to the State’s central bank”. While this provision prohibits the State from financing its budgetary deficit via Narodowy Bank Polski, the ECB understands that it does not constitute an implementation of Article 123 of the Treaty prohibiting monetary financing, and its aim and function are therefore not identical to those of the said Treaty prohibition. Article 123 of the Treaty, supplemented by Regulation (EC) No 3603/93, is directly applicable, so in general, it is unnecessary to transpose it into national legislation.

## 7.5.5 Legal integration of the NCB into the Eurosystem

With regard to Narodowy Bank Polski’s legal integration into the Eurosystem, the Polish Constitution and the Law on NBP need to be adapted in the respects set out below.

### 7.5.5.1 Economic policy objectives

Article 3(1) of the Law on NBP provides that Narodowy Bank Polski’s primary objective is to maintain price stability, while supporting the economic policies of the Government, insofar as this does not constrain the pursuit of its primary objective. This provision is incompatible with Article 127(1) of the Treaty and Article 2 of the Statute, as it does not reflect the secondary objective of supporting the general economic policies of the Union.

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<sup>200</sup> Under the Law on banking which applies to the provision of refinancing credit by Narodowy Bank Polski, a commercial bank may extend credit to an uncreditworthy borrower, provided that: (i) qualified security is established, and (ii) a recovery programme is instituted, which the crediting bank considers will ensure the borrower’s creditworthiness during a specified period (Article 70(2) of the Law on banking). Furthermore, Narodowy Bank Polski may demand early repayment of any refinancing credit if the financial situation of the credited bank has worsened to the extent of putting the timely repayment at risk (Article 42(6) of the Law on NBP).

<sup>201</sup> See Opinion CON/2013/5.

## 7.5.5.2 Tasks

### Monetary policy

Article 227(1) and (5) of the Constitution and Article 3(2)(5), Articles 12, 23 and 38 to 50a and 53 of the Law on NBP, which provide for Narodowy Bank Polski's powers with regard to monetary policy, do not recognise the ECB's powers in this field.

### Collection of statistics

Article 3(2)(7) and Article 23 of the Law on NBP, which provides for Narodowy Bank Polski's powers relating to the collection of statistics, do not recognise the ECB's powers in this field.

### Official foreign reserve management

Article 3(2)(2) and Article 52 of the Law on NBP, which provide for Narodowy Bank Polski's powers in the field of foreign exchange management, do not recognise the ECB's powers in this field.

### Payment systems

Article 3(2)(1) of the Law on NBP, which provides for Narodowy Bank Polski's powers in organising monetary settlements, does not recognise the ECB's powers in this field.

### Issue of banknotes

Article 227(1) of the Constitution and Article 4 and Articles 31 to 37 of the Law on NBP, which provide for Narodowy Bank Polski's exclusive powers to issue and withdraw banknotes and coins having the status of legal tender, do not recognise the Council's and the ECB's powers in this field.

## 7.5.5.3 Financial provisions

### Appointment of independent auditors

Article 69(1) of the Law on NBP, which provides for the auditing of Narodowy Bank Polski, does not recognise the Council's and the ECB's powers under Article 27.1 of the Statute. The powers of the NIK to control the activities of Narodowy Bank Polski

should be clearly defined by legislation and should be without prejudice to the activities of Narodowy Bank Polski's independent external auditors, as laid down in Article 27.1 of the Statute.

#### 7.5.5.4 Exchange rate policy

Articles 3(2)(3) and 17(4)(2) and Article 24 of the Law on NBP, which provide for Narodowy Bank Polski's power to implement the exchange rate policy set in agreement with the Council of Ministers, do not recognise the Council's and the ECB's powers in this field.

#### 7.5.5.5 International cooperation

Articles 5(1) and 11(3) of the Law on NBP, which provide for Narodowy Bank Polski's right to participate in international financial and banking institutions, do not recognise the ECB's powers in this field.

#### 7.5.5.6 Miscellaneous

Article 9(3) of the Law on NBP, which specifies the wording of the oath sworn by Narodowy Bank Polski's President, needs to be adapted to comply with Article 14.3 of the Statute.

With regard to Article 21(4) of the Law on NBP, which provides for Narodowy Bank Polski's rights to present its opinion on draft legislation concerning the activity of banks and having significance to the banking system, it is noted that consulting Narodowy Bank Polski does not obviate the need to consult the ECB under Articles 127(4) and 282(5) of the Treaty.

### 7.5.6 Conclusions

The Polish Constitution, the Law on NBP and the Law on the State Tribunal do not comply with all the requirements of central bank independence, confidentiality, the monetary financing prohibition and legal integration into the Eurosystem. Poland is a Member State with a derogation and must therefore comply with all adaptation requirements under Article 131 of the Treaty.<sup>202</sup>

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<sup>202</sup> For a detailed review of necessary adaptations of the Constitution, the Law on NBP and other laws, see Opinion CON/2011/9.

## 7.6 Romania

### 7.6.1 Compatibility of national legislation

The following legislation forms the legal basis for Banca Națională a României and its operations:

- Law No 312 on the Statute of Banca Națională a României (hereinafter the "Law on BNR").<sup>203</sup>

There have been no changes in relation to the points identified in the ECB's Convergence Report of June 2014 concerning the Law on BNR, and therefore those comments are repeated in this year's assessment.

### 7.6.2 Independence of the NCB

With regard to Banca Națională a României's independence, the Law on BNR and other legislation needs to be adapted in the respects set out below.

#### 7.6.2.1 Institutional independence

Article 3(1) of the Law on BNR provides that, when carrying out their tasks, Banca Națională a României and the members of its decision-making bodies may not seek or take instructions from public authorities or from any other institution or authority. The ECB understands that the provision encompasses both national and foreign institutions in line with Article 130 of the Treaty and Article 7 of the Statute. For legal certainty reasons, the next amendment to the Law on BNR should bring this provision fully in line with Article 130 of the Treaty and Article 7 of the Statute.

Further, Article 3 of the Law on BNR does not expressly prohibit the Government from seeking to influence the members of Banca Națională a României's decision-making bodies in situations where this may have an impact on Banca Națională a României's fulfilment of its ESCB-related tasks. In this respect the Law on BNR needs to be adapted to be fully consistent with Article 130 of the Treaty and Article 7 of the Statute.

#### 7.6.2.2 Personal independence

Article 33(9) of the Law on BNR provides that an appeal may be brought to the High Court of Cassation and Justice against a decision to recall from office a member of the Board of Banca Națională a României within 15 days of its publication in Monitorul Oficial al României. The Law on BNR is silent on the jurisdiction of the

<sup>203</sup> Monitorul Oficial al României, Part One, No 582, 30.6.2004.

Court of Justice of the European Union to hear cases with regard to the dismissal of the Governor. The ECB understands that in spite of this silence, Article 14.2 of the Statute applies.

Article 33(7) of the Law on BNR provides that no member of the Board of Banca Națională a României may be recalled from office for reasons other than or following a procedure other than those provided for in Article 33(6) of the Law on BNR. Article 33(6) of the Law on BNR contains grounds for dismissal which are compatible with those laid down in Article 14.2 of the Statute. Law 161/2003 on certain measures for transparency in the exercise of public dignities, public functions and business relationships and for the prevention and sanctioning of corruption,<sup>204</sup> and Law 176/2010 on the integrity in the exercise of public functions and dignities,<sup>205</sup> define the conflicts of interest and incompatibilities applicable to the Governor and the other members of the Board of Banca Națională a României and require them to report on their interests and wealth. The ECB understands that the sanctions provided for in these Laws for the breach of such obligations as well as the automatic resignation mechanism in cases of incompatibility<sup>206</sup> do not constitute new grounds for dismissal of the Governor or other members of the Board of Banca Națională a României in addition to those contained in Article 33 of the Law on BNR. For legal certainty reasons and in line with Article 33 of the Law on BNR, a clarification to this end in the above-mentioned Laws would be welcome.

### 7.6.2.3 Financial independence

Article 43 of the Law on BNR provides that each month, Banca Națională a României must transfer to the State budget an 80% share of the net revenues left after deducting expenses relating to the financial year, including provisions for credit risk, and any losses relating to previous financial years that remain uncovered. As noted in Chapter 7.6.4, this arrangement may in certain circumstances amount to an intra-year credit, which in turn may undermine the financial independence of Banca Națională a României.

A Member State may not put its NCB in a position where it has insufficient financial resources to carry out its ESCB or Eurosystem-related tasks, and also its own national tasks, such as financing its administration and own operations.

Article 43(3) of the Law on BNR also provides that Banca Națională a României sets up provisions for credit risk in accordance with its rules, after having consulted the Ministry of Public Finance. The ECB notes that NCBs must be free to independently create financial provisions to safeguard the real value of their capital and assets.

<sup>204</sup> Published in Monitorul Oficial al României, Part One, No 279, 21.4.2003.

<sup>205</sup> Published in Monitorul Oficial al României, Part One, No 621, 2.9.2010.

<sup>206</sup> According to the relevant provisions of Article 99 of Law 161/2003, if a member of the Board of Banca Națională a României or an employee occupying a leading position with Banca Națională a României does not choose within a given period of time between their function and the one which they have declared to be incompatible with their function, they are considered to have resigned from their function and the Parliament takes note of the resignation.

Article 43 of the Law on BNR should therefore be adapted, in addition to taking into account the issues highlighted in Chapter 7.6.4, to ensure that such arrangement does not undermine the ability of Banca Națională a României to carry out its tasks in an independent manner.

Pursuant to Articles 21 and 23 of Law 94/1992 on the organisation and functioning of the Court of Auditors,<sup>207</sup> the Court of Auditors is empowered to control the establishment, management and use of the public sector's financial resources, including Banca Națională a României's financial resources, and to audit management of the funds of Banca Națională a României. The scope of audit by the Court of Auditors is further defined in Article 47(2) of the Law on BNR, which provides that commercial operations performed by Banca Națională a României, as shown in the revenue and expenditure budget and in the annual financial statements, shall be subject to auditing by the Court of Auditors. As the provisions of Law 94/1992 on the organisation and functioning of the Court of Auditors expressly apply to Banca Națională a României, in the interests of legal certainty it should be clarified in Romanian legislation that the scope of audit by the Court of Auditors is provided by Article 47(2) of the Law on BNR and is therefore limited to commercial operations performed by Banca Națională a României.<sup>208</sup>

### 7.6.3 Confidentiality

Pursuant to Article 52(2) of the Law on BNR, the Governor may release confidential information on the four grounds listed under Article 52(2) of that Law. Under Article 37 of the Statute, professional secrecy is an ESCB-wide matter. Therefore, the ECB assumes that such release is without prejudice to the confidentiality obligations towards the ECB and the ESCB.

### 7.6.4 Monetary financing and privileged access

Articles 6(1) and 29(1) of the Law on BNR expressly prohibit direct purchase on the primary market by Banca Națională a României of debt instruments issued by the State, central and local public authorities, autonomous public service undertakings, national societies, national companies and other majority State-owned companies. Such prohibition has been extended by Article 6(2) to other bodies governed by public law and public undertakings in Member States. Furthermore, under Article 7(2) of the Law on BNR, Banca Națională a României is prohibited from granting overdraft facilities or any other type of credit facility to the State, central and local public authorities, autonomous public service undertakings, national societies, national companies and other majority State-owned companies. Article 7(4) extends this prohibition to other bodies governed by public law and public undertakings in Member States. The range of public sector entities referred to in these provisions

<sup>207</sup> Published in Monitorul Oficial al României, Part One, No 238, 3.4.2014.

<sup>208</sup> For the activities of the NCB's independent external auditors see, as an example, Article 27.1 of the Statute.

needs to be extended to be consistent with and fully mirror Article 123 of the Treaty and aligned with the definitions contained in Regulation (EC) No 3603/93.

Pursuant to Article 7(3) of the Law on BNR, majority State-owned credit institutions are exempted from the prohibition on granting overdraft facilities and any other type of credit facility in Article 7(2) and benefit from loans granted by Banca Națională a României in the same way as any other credit institution eligible under Banca Națională a României's regulations. The wording of Article 7(3) of the Law on BNR should be aligned with the wording of Article 123(2) of the Treaty, which only exempts publicly owned credit institutions "in the context of the supply of reserves by central banks".

Article 26 of the Law on BNR provides that, to carry out its task of ensuring financial stability, in exceptional cases and only on a case-by-case basis, Banca Națională a României may grant to credit institutions loans which are unsecured or secured by assets other than assets eligible to collateralise the monetary or foreign exchange policy operations of Banca Națională a României. Article 26 does not contain sufficient safeguards to prevent such lending from potentially breaching the monetary financing prohibition contained in Article 123 of the Treaty, especially given the risk that such lending could result in the provision of solvency support to a credit institution experiencing financial difficulties, and should be adapted accordingly.

Article 43 of the Law on BNR provides that Banca Națională a României must transfer to the State budget an 80% share of the net revenues left after deducting expenses relating to the financial year, including provisions for credit risk, and loss related to the previous financial years that remained uncovered. The 80% of the net revenues is transferred monthly before the 25th day of the following month, based on a special statement. The adjustments relating to the financial year are performed by the deadline for submission of the annual balance sheet, based on a rectifying special statement. This provision is constructed in a way which does not rule out the possibility of an intra-year anticipated profit distribution in circumstances where Banca Națională a României accumulates profits during the first half of the year but suffers consecutive losses during the second half of the year. Although the State is under an obligation to make adjustments after the closure of the financial year and would therefore have to return any excessive distributions to Banca Națională a României, this would only happen after the deadline for submission of the annual balance sheet and may therefore be viewed as amounting to an intra-year credit to the State. Article 43 should be adapted to ensure that such an intra-year credit is not possible to rule out the possibility of breaching the monetary financing prohibition in Article 123 of the Treaty.

#### 7.6.5 Legal integration of the NCB into the Eurosystem

With regard to Banca Națională a României's legal integration into the Eurosystem, the Law on BNR needs to be adapted in the respects set out below.

#### 7.6.5.1 Economic policy objectives

Article 2(3) of the Law on BNR provides that, without prejudice to the primary objective of price stability, Banca Națională a României must support the State's general economic policy. This provision is incompatible with Article 127(1) of the Treaty, as it does not reflect the secondary objective of supporting the general economic policies of the Union.

#### 7.6.5.2 Tasks

##### Monetary policy

Article 2(2)(a), Article 5, Articles 6(3) and 7(1), Articles 8, 19 and 20 and Article 33(1)(a) of the Law on BNR, which provide for the powers of Banca Națională a României in the field of monetary policy and instruments for the implementation thereof, do not recognise the ECB's powers in this field.

##### Collection of statistics

Article 49 of the Law on BNR, which provides for the powers of Banca Națională a României relating to the collection of statistics, does not recognise the ECB's powers in this field.

##### Official foreign reserve management

Articles 2(2)(e) and 9(2)(c) and Articles 30 and 31 of the Law on BNR, which provide for the powers of Banca Națională a României relating to foreign reserve management, do not recognise the ECB's powers in this field.

##### Payment systems

Article 2(2)(b), Article 22 and Article 33(1)(b) of the Law on BNR, which provide for the role of Banca Națională a României in relation to the smooth operation of payment systems, do not recognise the ECB's powers in this field.

##### Issue of banknotes

Article 2(2)(c) and Articles 12 to 18 of the Law on BNR, which provide for Banca Națională a României's role in issuing banknotes and coins, do not recognise the Council's and the ECB's powers in this field.



### 7.6.5.3 Financial provisions

#### Appointment of independent auditors

Article 36(1) of the Law on BNR, which provides that the annual financial statements of Banca Națională a României are audited by financial auditors that are legal entities authorised by the Financial Auditors Chamber in Romania and selected by the Board of Banca Națională a României through a tender procedure, does not recognise the ECB's and the Council's powers under Article 27.1 of the Statute.

#### Financial reporting

Article 37(3) of the Law on BNR, which provides that Banca Națională a României establishes the templates for the annual financial statements after having consulted the Ministry of Public Finance, and Article 40 of the Law on BNR, which provides that Banca Națională a României adopts its own regulations on organising and conducting its accounting, in compliance with the legislation in force and having regard to the advisory opinion of the Ministry of Public Finance, and that Banca Națională a României registers its economic and financial operations in compliance with its own chart of accounts, also having regard to the advisory opinion of the Ministry of Public Finance, do not reflect Banca Națională a României's obligation to comply with the Eurosystem's regime for financial reporting of NCB operations, pursuant to Article 26 of the Statute.

### 7.6.5.4 Exchange rate policy

Article 2(2)(a) and (d), Article 9 and Article 33(1)(a) of the Law on BNR, which empower Banca Națională a României to conduct exchange rate policy, do not recognise the Council's and the ECB's powers in this field.

Articles 10 and 11 of the Law on BNR, which allow Banca Națională a României to draw up regulations on monitoring and controlling foreign currency transactions in Romania and to authorise foreign currency capital operations, transactions on foreign currency markets and other specific operations, do not recognise the Council's and the ECB's powers in this field.

### 7.6.6 Miscellaneous

With regard to Article 3(2) of the Law on BNR, which entitles Banca Națională a României to be consulted on draft national legislation, consulting Banca Națională a României does not obviate the need to consult the ECB under Articles 127(4) and 282(5) of the Treaty.

Article 57 of the Law on BNR does not recognise the ECB's powers to impose sanctions.

Article 4(5) of the Law on BNR entitles Banca Națională a României to conclude short-term credit arrangements and to perform other financial and banking operations with other entities, including central banks, and provides that such arrangements are possible only if the credit is repaid within one year. The ECB notes that such a limitation is not foreseen in Article 23 of the Statute.

## 7.6.7 Conclusions

The Law on BNR does not comply with all the requirements for central bank independence, the monetary financing prohibition and legal integration into the Eurosystem. Romania is a Member State with a derogation and must therefore comply with all adaptation requirements under Article 131 of the Treaty.

## 7.7 Sweden

### 7.7.1 Compatibility of national legislation

The following legislation forms the legal basis for Sveriges Riksbank and its operations:

- the Instrument of Government,<sup>209</sup> which forms part of the Swedish Constitution,
- the Law on Sveriges Riksbank,<sup>210</sup>
- the Law on exchange rate policy.<sup>211</sup>

There have been no major changes to the Law on Sveriges Riksbank in relation to the points identified in the ECB's Convergence Report of May 2014, and those comments are therefore largely repeated in this year's assessment.

### 7.7.2 Independence of the NCB

With regard to Sveriges Riksbank's independence, the Law on Sveriges Riksbank needs to be adapted in the respects set out below.

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<sup>209</sup> SFS 1974:152.

<sup>210</sup> SFS 1988:1385.

<sup>211</sup> SFS 1998:1404.

### 7.7.2.1 Institutional independence

Article 13 of Chapter 9 of the Instrument of Government states that Sveriges Riksbank is an authority under the Riksdag. Article 2 of Chapter 3 of the Law on Sveriges Riksbank, which prohibits the members of the Executive Board from seeking or taking of instructions, and Article 13 of Chapter 9 of the Instrument of Government, which prohibits any authority from giving instructions to Sveriges Riksbank, do not cover all ESCB-related tasks, as required by Article 130 of the Treaty and Article 7 of the Statute.

Although the explanatory memorandum to the Law on Sveriges Riksbank extends the coverage to all ESCB-related tasks, it would be beneficial if this issue and the relation with Article 13 of Chapter 9 of the Instrument of Government were addressed in the next amendments to the relevant provisions of Swedish legislation.

In addition, pursuant to Article 13(1) of Chapter 8 of the Instrument of Government, the Parliament may direct Sveriges Riksbank in an act of law within its sphere of responsibility under Chapter 9 (Financial power) to adopt provisions concerning its duty to promote secure and efficient payment systems. The ECB understands that this provision only enables the Parliament to assign the adoption of regulations to Sveriges Riksbank within the Sveriges Riksbank's areas of responsibility for promoting secure and efficient payment systems.

Article 3 of Chapter 6 of the Law on Sveriges Riksbank, which establishes the right of the minister appointed by the Swedish Government to be informed prior to Sveriges Riksbank making a monetary policy decision of major importance, could potentially breach the prohibition on giving instructions to the NCBs pursuant to Article 130 of the Treaty and Article 7 of the Statute. Article 3 of Chapter 6 of the Law on Sveriges Riksbank is therefore incompatible with central bank independence and should be adapted accordingly.

### 7.7.2.2 Financial independence

In accordance with Article 3 of Chapter 10 of the Law on Sveriges Riksbank, the General Council of Sveriges Riksbank submits proposals to the Swedish Parliament and the Swedish National Audit Office on the allocation of Sveriges Riksbank's profit. Pursuant to Article 4 of Chapter 10 of the Law on Sveriges Riksbank, the Swedish Parliament then determines the allocation of Sveriges Riksbank's profit. These provisions are supplemented by non-statutory guidelines on profit distribution, which state that Sveriges Riksbank should pay 80% of its profit to the Swedish State, after adjustment for exchange rate and gold valuation effects and based on a five-year average, with the remaining 20% used to increase its own capital. However, these guidelines are not legally binding and there is no statutory provision limiting the amount of profit that may be paid out.

The present arrangements on profit distribution are under review.<sup>212</sup> However, as they currently stand, they are incompatible with the requirement of central bank independence in Article 130 of the Treaty and Article 7 of the Statute. To safeguard Sveriges Riksbank's financial independence, statutory provisions should be adopted containing clear provisions concerning the limitations applicable to the Swedish Parliament's decisions on Sveriges Riksbank's profit allocation.

### 7.7.3 Monetary financing prohibition

Article 1(3) of Chapter 8 of the Law on Sveriges Riksbank provides that Sveriges Riksbank may not extend credit or purchase debt instruments directly from the State, another public body or a Union institution. Although the explanatory memorandum to the Law on Sveriges Riksbank, which according to Swedish legal tradition will be closely followed by Swedish courts when interpreting national legislation, states that the coverage is extended to Union bodies and the public sector including public undertakings of other Member States, it would be beneficial if this issue could be addressed when the Law on Sveriges Riksbank is next amended, to bring it fully in line with Article 123 of the Treaty.

In addition, Article 1(4) of Chapter 8 of the Law on Sveriges Riksbank provides that "subject to other provisions in this Law, the Riksbank may also grant credit to and purchase debt instruments from financial institutions owned by the State or another public body". The wording of Article 1(4) of Chapter 8 of the Law on Sveriges Riksbank should be aligned with the wording of Article 123(2) of the Treaty, which only exempts publicly owned credit institutions from the prohibition on monetary financing in respect of the supply of reserves by central banks; the central bank may not supply reserves to other public financial institutions. In the same vein, the range of public sector entities would need to be made consistent with Article 123(2) of the Treaty, and the ECB suggests, for reasons of legal certainty, inserting a reference to Article 123 of the Treaty in Article 1 of Chapter 8 of the Law on Sveriges Riksbank.

As noted above, the provisions of the Law on the allocation of Sveriges Riksbank's profit are supplemented by non-statutory guidelines on profit distribution, that are not legally binding, and state that Sveriges Riksbank should pay 80% of its profit to the Swedish State, after adjustment for exchange rate and gold valuation effects and based on a five-year average, with the remaining 20% used to increase its own capital. It is essential for the five-year average rule to be applied in a way which remains consistent with the prohibition on monetary financing under Article 123 of the Treaty, i.e. only as a calculation method and a cap for the NCB's profit distribution to the State budget. Statutory provisions providing for necessary limitations and ensuring that a breach of the monetary financing prohibition may not occur in this respect should also be adopted. To comply with the monetary financing prohibition, the amount distributed to the State budget pursuant to the applicable

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<sup>212</sup> See Opinion CON/2013/53.

profit distribution rules cannot be paid, even partially, from the NCB's reserve capital. Therefore, profit distribution rules should leave unaffected the NCB's reserve capital.

#### 7.7.4 Legal integration of the NCB into the Eurosystem

With regard to Sveriges Riksbank's legal integration into the Eurosystem, the Law on Sveriges Riksbank, the Constitution and the Law on exchange rate policy need to be adapted in the respects set out below.

##### 7.7.4.1 Economic policy objectives

Article 2 of Chapter 1 of the Law on Sveriges Riksbank provides that Sveriges Riksbank's objective is to maintain price stability. It also provides that Sveriges Riksbank promotes a safe and efficient payments system. The ECB notes that insofar as this is a task and not an objective of the Sveriges Riksbank, there is no need to subordinate it to the ESCB's primary and secondary objectives. In any case, Article 2 should reflect the ESCB's secondary objective of supporting the general economic policies of the Union in line with Article 127(1) of the Treaty and Article 2 of the Statute.

##### 7.7.4.2 Tasks

Article 1 of Chapter 1 of the Law on Sveriges Riksbank, which provides that Sveriges Riksbank may only conduct, or participate in, such activities for which it has been authorised by Swedish law, is incompatible with the provisions of the Treaty and the Statute as it does not provide for Sveriges Riksbank's legal integration into the Eurosystem.

#### Monetary policy

Article 13 of Chapter 9 of the Instrument of Government and Article 2 of Chapter 1 of the Law on Sveriges Riksbank, which establish Sveriges Riksbank's powers in the field of monetary policy, do not recognise the ECB's powers in this field.

Articles 2, 5 and 6 of Chapter 6 of the Law on Sveriges Riksbank, which provide for Sveriges Riksbank's powers in the field of monetary policy, do not recognise the ECB's powers in this field.

Article 6 of Chapter 6 and Articles 1 and 2a of Chapter 11 of the Law on Sveriges Riksbank, concerning the imposition of minimum reserves on financial institutions and the payment of a special fee to the Swedish State in the event of a breach of this requirement, do not recognise the ECB's powers in this field.

### Collection of statistics

Article 4(2) and Articles 9, 10 and 11<sup>213</sup> of Chapter 6 of the Law on Sveriges Riksbank, which establish Sveriges Riksbank's powers relating to the collection of statistics, do not recognise the ECB's powers in this field.

### Official foreign reserve management

Chapter 7 of the Law on Sveriges Riksbank, and Article 12 of Chapter 9 of the Instrument of Government, which provide for Sveriges Riksbank's powers in the field of foreign reserve management, do not recognise the ECB's powers in this field.

### Payment systems

Article 14(2) of Chapter 9 of the Instrument of Government and Article 2 of Chapter 1 and Article 7 of Chapter 6 of the Law on Sveriges Riksbank, which establish Sveriges Riksbank's powers with regard to the smooth operation of payment systems, do not recognise the ECB's powers in this field.

### Issue of banknotes

Article 14 of Chapter 9 of the Instrument of Government and Chapter 5 of the Law on Sveriges Riksbank, which lay down Sveriges Riksbank's exclusive right to issue banknotes and coins, do not recognise the Council's and the ECB's powers in this field.

#### 7.7.4.3 Financial provisions

##### Appointment of independent auditors

The Law on Sveriges Riksbank does not recognise the Council's and the ECB's powers under Article 27.1 of the Statute.

#### 7.7.4.4 Exchange rate policy

Article 12 of Chapter 9 of the Instrument of Government and Chapter 7 of the Law on Sveriges Riksbank, together with the Law on exchange rate policy, lay down the powers of the Swedish Government and Sveriges Riksbank in the area of exchange

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<sup>213</sup> These articles have been introduced in Chapter 6 of the Law on Sveriges Riksbank by amendments which entered into force in June 2014 (SFS 2014:485).

rate policy. These provisions do not recognise the Council's and the ECB's powers in this field.

#### 7.7.4.5 International cooperation

Pursuant to Article 6 of Chapter 7 in the Law on Sveriges Riksbank, Sveriges Riksbank may serve as a liaison body in relation to international financial institutions of which Sweden is a member. This provision does not recognise the ECB's powers in this field.

#### 7.7.4.6 Miscellaneous

With regard to Article 4 of Chapter 2 of the Law on Sveriges Riksbank, which provides for the General Council's right to submit consultation opinions on behalf of Sveriges Riksbank within its area of competence, it is noted that consulting Sveriges Riksbank does not obviate the need to consult the ECB under Articles 127(4) and 282(5) of the Treaty.

As specified in Chapter 2.2.4, the primacy of Union law and rules adopted thereunder also means that national laws on access by third parties to documents may not lead to infringements of the ESCB's confidentiality regime. The ECB understands that the Public Access to Information and Secrecy Act<sup>214</sup> and any other relevant Swedish legislation will permit Sveriges Riksbank to apply it in a manner that ensures compliance with the ESCB's confidentiality regime.

#### 7.7.5 Conclusions

The Law on Sveriges Riksbank, the Constitution and the Law on exchange rate policy do not comply with all the requirements for central bank independence, the monetary financing prohibition and legal integration into the Eurosystem. Sweden is a Member State with a derogation and must therefore comply with all adaptation requirements under Article 131 of the Treaty. The ECB notes that the Treaty has obliged Sweden to adopt national legislation for integration into the Eurosystem since 1 June 1998. Over the years no legislative action has been taken by the Swedish authorities to remedy the incompatibilities described in this and previous reports.

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<sup>214</sup> SFS 2009:400.

## Glossary

**Acquis communautaire:** the body of EU legislation, including its interpretation by the Court of Justice of the European Union, by which all EU Member States are bound.

**Alert Mechanism Report:** the first step of the EU's new surveillance procedure for preventing and correcting macroeconomic imbalances. In the report, the European Commission identifies EU Member States that will be subject to further in-depth analysis under the **macroeconomic imbalance procedure**.

**Banking union:** one of the building blocks for completing Economic and Monetary Union, which consists of an integrated financial framework with a single rulebook, a **Single Supervisory Mechanism**, common deposit protection and a single bank resolution mechanism.

**Central government:** the government as defined in the **European System of Accounts 2010**, but excluding regional and local governments (see also **general government**). The term includes all administrative departments of the (central) state and other central agencies whose competence extends over the entire economic territory, except for the administration of social security funds.

**Central rate:** the exchange rate of each **ERM II** member's currency vis-à-vis the euro, around which the ERM II fluctuation margins are defined.

**Combined direct and portfolio investment balance:** the sum of the direct investment balance and the portfolio investment balance in the financial account of the balance of payments. Direct investment is cross-border investment for the purpose of acquiring a lasting interest in an enterprise resident in another economy (assumed, in practice, for ownership of at least 10% of ordinary shares or voting power). This includes equity capital, reinvested earnings and "other capital" associated with inter-company operations. Portfolio investment includes equity securities (when not a direct investment) and debt securities (bonds and notes, and money market instruments).

**Contingent liabilities:** government obligations that arise only upon the realisation of particular events (e.g. state guarantees).



**Convergence criteria:** the criteria set out in Article 140(1) of the **Treaty** (and developed further in Protocol (No 13) on the convergence criteria) that must be fulfilled by each EU Member State before it can adopt the euro. They relate to performance in respect of price stability, government financial positions, exchange rates and long-term interest rates. The reports produced under Article 140(1) by the European Commission and the European Central Bank examine whether a high degree of sustainable convergence has been achieved by each EU Member State on the basis of its fulfilment of these criteria, in addition to examining the compatibility of their national legislation, including the statute of their respective **national central bank**, with the **Treaties**.

**Convergence programme:** a programme outlining the path towards the achievement of **reference values** indicated in the **Treaty**, containing medium-term government plans and assumptions regarding the development of key economic variables. Measures to consolidate fiscal balances are also highlighted, together with underlying economic scenarios. Convergence programmes normally cover the following three to four years and are updated annually. They are examined by the European Commission and the Economic and Financial Committee, whose reports serve as the basis for an assessment by the ECOFIN Council. Following the start of Stage Three of **Economic and Monetary Union**, EU Member States with a derogation continue to submit convergence programmes, whereas countries which are members of the euro area present annual stability programmes, in accordance with the **Stability and Growth Pact**.

**Current transfers:** transfers of the **general government** (e.g. relating to international cooperation), payments of current taxes on income and wealth, and other transfers, such as workers' remittances, which are not related to capital expenditure; they also include production and import subsidies, social benefits and transfers to EU institutions.

**Cyclical component of the budget balance:** the effect on the budget balance of the output gap, as estimated by the European Commission.

**Debt ratio (general government):** **general government** debt is defined as total gross debt at nominal value outstanding at the end of the year and consolidated between and within the sectors of general government. The government debt-to-GDP ratio is defined as the ratio of general government debt to GDP at current market prices. It is the subject of one of the fiscal criteria used to define the existence of an excessive deficit, as laid down in Article 126(2) of the **Treaty**.

**Deficit-debt adjustment:** the difference between the **general government** budget balance (government deficit or surplus) and the change in general government debt. Such adjustments may stem from, among other things, changes in the amount of financial assets held by the government, revaluations or statistical adjustments.

**Deficit ratio (general government):** the **general government** deficit is defined as net borrowing and corresponds to the difference between general government revenue and general government expenditure. The deficit ratio is defined as the ratio of the general government deficit to GDP at current market prices. It is the subject of one of the fiscal criteria used to define the existence of an excessive deficit, as laid down in Article 126(2) of the **Treaty**.

**Economic and Monetary Union (EMU):** the outcome of the process for the harmonisation of the economic policies of the EU Member States that led to the single currency, the euro, and the single monetary policy of the euro area. The process for achieving EMU, as laid down in the Treaty on European Union, involved three stages. Stage Three, the final stage, began on 1 January 1999 with the irrevocable fixing of exchange rates, the transfer of monetary competence to the European Central Bank and the introduction of the euro. The cash changeover on 1 January 2002 completed the process of setting up EMU.

**Effective exchange rate (EER) (nominal/real):** a weighted average of the bilateral exchange rates of a country's currency against the currencies of major trading partners. The weights used reflect the share of each partner country in the trade of the country under consideration and account for competition in third markets. The real EER is the nominal EER deflated by a weighted average of foreign prices relative to domestic prices.

**Elderly dependency ratio:** the proportion of the population of a country aged 65 and over in relation to the population aged 15 to 64.

**ERM II (exchange rate mechanism II):** the exchange rate mechanism which provides the framework for exchange rate policy cooperation between the **euro area** countries and the non-euro area EU Member States. ERM II is a multilateral arrangement with fixed, but adjustable, central rates and a standard fluctuation band of  $\pm 15\%$  within which currencies are allowed to fluctuate. Decisions concerning central rates and, possibly, narrower fluctuation bands are taken by mutual agreement between the EU Member State concerned, the euro area countries, the European Central Bank (ECB) and the other EU Member States participating in the mechanism. All participants in ERM II, including the ECB, have the right to initiate a confidential procedure aimed at a realignment of the central rates.

**ERM II fluctuation margins:** the mutually agreed floor and ceiling within which **ERM II** member currencies are allowed to fluctuate against the euro.

**Euro area:** the area formed by the EU Member States whose currency is the euro and in which a single monetary policy is conducted under the responsibility of the **Governing Council of the European Central Bank**. The euro area currently comprises Belgium, Germany, Estonia, Ireland, Greece, Spain, France, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Austria, Portugal, Slovenia, Slovakia and Finland.

**European System of Accounts 2010 (ESA 2010):** a comprehensive and integrated system of macroeconomic accounts based on a set of internationally agreed statistical concepts, definitions, classifications and accounting rules aimed at achieving a harmonised quantitative description of the economies of the EU Member States. The ESA 2010 is the EU's version of the world System of National Accounts 2008 (2008 SNA).

**European System of Central Banks (ESCB):** composed of the European Central Bank (ECB) and the **national central banks (NCBs)** of all 28 EU Member States, i.e. it includes, in addition to the members of the **Eurosystem**, the NCBs of those EU Member States whose currency is not the euro. The ESCB is governed by the **Governing Council of the ECB** and the **Executive Board of the ECB**, and, as a third decision-making body of the ECB, by the **General Council of the ECB**.

**European Systemic Risk Board (ESRB):** an independent EU body responsible for the macroprudential oversight of the financial system within the EU. It contributes to the prevention or mitigation of systemic risks to financial stability that arise from developments within the financial system, taking into account macroeconomic developments, so as to avoid periods of widespread financial distress.

**Eurostat:** the Statistical Office of the EU. It is part of the European Commission and responsible for the production of EU statistics.

**Eurosystem:** the central banking system of the euro area. It comprises the European Central Bank and the **national central banks** of the EU Member States whose currency is the euro.

**Excessive deficit procedure:** the provisions set out in Article 126 of the **Treaty**, and specified in Protocol (No 12) on the excessive deficit procedure, require EU Member States to maintain budgetary discipline, define the criteria for a budgetary position to be considered an excessive deficit, and regulate steps to be taken following the observation that the requirements for the budgetary balance or government debt have not been fulfilled. Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure is also an element of the **Stability and Growth Pact**.

**Excessive imbalance procedure:** refers to the corrective arm of the **macroeconomic imbalance procedure**, which is initiated when excessive macroeconomic imbalances are identified in an EU Member State, including imbalances that jeopardise the proper functioning of **Economic and Monetary Union**. The procedure includes issuing policy recommendations, the preparation of a corrective action plan by the Member State concerned, enhanced surveillance and monitoring requirements and, in respect of EU Member States whose currency is the euro, the possibility of financial sanctions in the event of a failure to take corrective action.

**Exchange rate volatility:** a measure of the variability of exchange rates, usually calculated on the basis of the annualised standard deviation of daily percentage changes.

**Executive Board of the ECB:** one of the decision-making bodies of the European Central Bank (ECB). It comprises the President and the Vice-President of the ECB and four other members appointed by the European Council, acting by a qualified majority among the Heads of State or Government of the euro area member countries, on a recommendation from the Council of the European Union, after it has consulted the European Parliament and the ECB.

**Fiscal compact:** a part (Title III) of the **Treaty on Stability, Coordination and Governance in the Economic and Monetary Union** stipulates that the budgetary position of the **general government** of signatory Member States must be balanced or in surplus.

**Funded and unfunded pension schemes:** funded pension schemes are schemes that finance pension payments by drawing down on segregated and earmarked assets. These schemes can be exactly funded, under-funded or over-funded, depending on the size of the accumulated assets in relation to the pension entitlements. Unfunded pension schemes are schemes that finance current pension payments with the ongoing contributions paid by future pensioners and/or other ongoing revenue, such as taxes or transfers; unfunded schemes may hold sizeable assets (e.g. for liquidity reasons or as buffer funds).

**General Council of the ECB:** one of the decision-making bodies of the European Central Bank (ECB). It comprises the President and the Vice-President of the ECB and the governors of all the **national central banks** of the **European System of Central Banks**.

**General government:** a sector defined in the **European System of Accounts 2010** as comprising resident entities that are engaged primarily in the production of non-market goods and services intended for individual and collective consumption and/or in the redistribution of national income and wealth. Included are central, regional and local government authorities, as well as social security funds. Excluded are government-owned entities that conduct commercial operations, such as public enterprises.

**Governing Council of the ECB:** the supreme decision-making body of the European Central Bank (ECB). It comprises all the members of the **Executive Board of the ECB** and the governors of the **national central banks** of the EU Member States whose currency is the euro.

**Gross external debt:** the outstanding amount of an economy's financial liabilities that require payments of principal and/or interest at some point in the future to the rest of the world.

**Harmonised Index of Consumer Prices (HICP):** a measure of the development of consumer prices that is compiled by **Eurostat** and harmonised for all EU Member States.

**Harmonised long-term interest rates:** Article 4 of Protocol (No 13) on the convergence criteria requires interest rate convergence to be measured by means of interest rates on long-term government bonds or comparable securities, taking into account differences in national definitions. In order to fulfil the Treaty requirement, the European Central Bank has carried out conceptual work on the harmonisation of long-term interest rate statistics and regularly collects data from the **national central banks**, in cooperation with and on behalf of **Eurostat**. Harmonised data are used for the convergence examination in this report.

**Interest-growth differential:** the difference between the annual change in nominal GDP and the nominal average interest rate paid on outstanding government debt (the “effective” interest rate). The interest-growth differential is one of the determinants of changes in the government **debt ratio**.

**International investment position (i.i.p.):** the value and composition of an economy’s outstanding financial claims on and financial liabilities to the rest of the world. The net i.i.p. is also referred to as the net external or foreign asset position.

**Intervention at the limits:** compulsory intervention by central banks if their currencies reach the floor or the ceiling of their **ERM II fluctuation margins**.

**Intra-marginal intervention:** intervention by a central bank to influence the exchange rate of its currency within its **ERM II fluctuation margins**.

**Investment:** gross fixed capital formation as defined in the **European System of Accounts 2010**.

**Legal convergence:** the process of adaptation by EU Member States of their legislation, in order to make it compatible with the **Treaties** and the **Statute** for the purposes of: (i) integrating their **national central banks (NCBs)** into the **European System of Central Banks**; and (ii) adopting the euro and making their NCBs an integral part of the **Eurosystem**.

**Macroeconomic imbalance procedure (MIP):** a procedure aimed at broadening the surveillance of economic policies of the EU Member States to include a detailed and formal framework to prevent and correct excessive imbalances and to help the EU Member States affected to establish corrective action plans before divergences become entrenched. The MIP is based on Article 121(6) of the **Treaty**. The first step of this surveillance procedure of the EU is the **Alert Mechanism Report**. The MIP has a preventive and a corrective arm. The latter is made operational by the **excessive imbalance procedure**.

**Measures with a temporary effect:** all non-cyclical effects on fiscal variables which (i) reduce (or increase) the **general government** deficit or gross debt (see also **debt ratio** and **deficit ratio**) in a specified period only (“one-off” effects), or (ii) improve (or worsen) the budgetary situation in a specified period at the expense (or to the benefit) of future budgetary situations (“self-reversing” effects).

**National central bank (NCB):** a central bank of an EU Member State.

**Net capital expenditure:** comprises a government’s final capital expenditure (i.e. gross fixed capital formation, plus net purchases of land and intangible assets, plus changes in stocks) and net capital transfers paid (i.e. investment grants, plus unrequited transfers paid by the **general government** sector to finance specific items of gross fixed capital formation by other sectors, minus capital taxes and other capital transfers received by the general government sector).

**Non-cyclical factors:** influences on a government budget balance that are not due to cyclical fluctuations (see the **cyclical component of the budget balance**). They can therefore result from either structural, i.e. permanent, changes in budgetary policies or from **measures with a temporary effect**.

**Output gap:** the difference between the actual and potential levels of output of an economy as a percentage of potential output. Potential output is calculated on the basis of the trend rate of growth of the economy. A positive output gap means that actual output is above the trend or potential level of output and suggests the possible emergence of inflationary pressures. A negative output gap signifies that actual output is below the trend or potential level of output and indicates the possible absence of inflationary pressures.

**Primary balance:** the **general government** sector’s net borrowing or net lending excluding interest payments on consolidated government liabilities.

**Private sector credit flow:** annual transactions on debt securities issued and loans taken out by non-financial corporations and households (including non-profit institutions serving households). The private sector credit flow-to-GDP ratio is defined as the ratio of private sector credit flow to GDP at current market prices.

**Private sector debt:** outstanding amounts at the end of the year of securities issued and loans taken out by non-financial corporations and households (including non-profit institutions serving households). The private sector debt-to-GDP ratio is defined as the ratio of private sector debt to GDP at current market prices.

**Realignment:** a change in the **central rate** of a currency participating in **ERM II**.

**Reference period:** the time interval specified in Article 140 of the **Treaty** and in Protocol (No 13) on the convergence criteria for examining progress towards convergence.

**Reference value:** Protocol (No 12) on the excessive deficit procedure sets explicit reference values for the **deficit ratio** (3% of GDP) and the debt ratio (60% of GDP), while Protocol (No 13) on the convergence criteria specifies the methodology for calculating the reference values for the examination of price and long-term interest rate convergence.

**Single Supervisory Mechanism (SSM):** a mechanism composed of the European Central Bank (ECB) and national competent authorities of participating EU Member States for the exercise of the prudential supervisory tasks conferred upon the ECB (in line with Article 127(6) of the **Treaty**) by the SSM Regulation (Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institution), which entered into force on 3 November 2013. The main aims of the SSM are to ensure the safety and soundness of credit institutions and the stability of the financial system within the EU and within each Member State. The ECB is responsible for the effective and consistent functioning of the SSM, which forms part of the **banking union**, and assumed its full supervisory tasks on 4 November 2014, i.e. 12 months after the Regulation entered into force. All euro area countries participate automatically in the SSM, and other EU Member States may participate by entering into close cooperation under the SSM Regulation.

**Six pack:** five regulations and one directive that entered into force on 13 December 2011 to strengthen the **Stability and Growth Pact**. The four fiscally-related legislative acts are aimed at strengthening budgetary surveillance and coordination of economic policies, speeding up and clarifying the implementation of the excessive deficit procedure, and ensuring the effective enforcement of budgetary surveillance in the euro area and the requirements for the fiscal frameworks of the Member States. The two macroeconomic-related legislative acts are aimed at preventing and correcting macroeconomic imbalances and at allowing enforcement action to correct excessive macroeconomic imbalances in the euro area.

**Stability and Growth Pact:** intended to serve as a means of safeguarding sound government finances in the EU Member States in order to strengthen the conditions for price stability and for strong, sustainable growth that is conducive to employment creation. The Stability and Growth Pact has two arms – a preventive arm and a corrective arm. The preventive arm prescribes that Member States specify medium-term budgetary objectives, while the corrective arm contains concrete specifications on the **excessive deficit procedure**.

**Statute:** refers to Protocol (No 4) on the Statute of the **European System of Central Banks** and of the European Central Bank, annexed to the **Treaties**.

**Treaties:** unless otherwise stated, all references in this report to the “Treaties” refer to both the Treaty on European Union and the Treaty on the Functioning of the European Union.

**Treaty:** unless otherwise stated, all references in this report to the “Treaty” refer to the Treaty on the Functioning of the European Union, and the references to article numbers reflect the numbering in effect since 1 December 2009.

**Treaty of Lisbon (Lisbon Treaty):** amended the EU’s two core treaties, the Treaty on European Union and the Treaty establishing the European Community, and renamed the latter as Treaty on the Functioning of the European Union. The Treaty of Lisbon was signed in Lisbon on 13 December 2007 and entered into force on 1 December 2009.

**Treaty on Stability, Coordination and Governance in the Economic and Monetary Union:** an intergovernmental treaty, which was signed in Brussels on 2 March 2012 and entered into force on 1 January 2013. It contains a “fiscal compact”, which complements and, in some areas, enhances key provisions of the **Stability and Growth Pact**. Among other things, the Treaty requires the Member States that have ratified it to enshrine a balanced budget in national law and increases the role of independent fiscal monitoring bodies.

**Two-pack:** two regulations on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area (Regulation (EU) No 473/2013), and on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability (Regulation (EU) 472/2013).



## Abbreviations

### Countries

<b>BE</b>	Belgium	<b>HR</b>	Croatia	<b>PL</b>	Poland
<b>BG</b>	Bulgaria	<b>IT</b>	Italy	<b>PT</b>	Portugal
<b>CZ</b>	Czech Republic	<b>CY</b>	Cyprus	<b>RO</b>	Romania
<b>DK</b>	Denmark	<b>LV</b>	Latvia	<b>SI</b>	Slovenia
<b>DE</b>	Germany	<b>LT</b>	Lithuania	<b>SK</b>	Slovakia
<b>EE</b>	Estonia	<b>LU</b>	Luxembourg	<b>FI</b>	Finland
<b>IE</b>	Ireland	<b>HU</b>	Hungary	<b>SE</b>	Sweden
<b>GR</b>	Greece	<b>MT</b>	Malta	<b>UK</b>	United Kingdom
<b>ES</b>	Spain	<b>NL</b>	Netherlands	<b>US</b>	United States
<b>FR</b>	France	<b>AT</b>	Austria		

In accordance with EU practice, the EU Member States are listed in this report using the alphabetical order of the country names in the national languages.

### Others

<b>AWG</b>	Economic Policy Committee's Working Group on Ageing Populations and Sustainability	<b>GDP</b>	gross domestic product
<b>BIS</b>	Bank for International Settlements	<b>HICP</b>	Harmonised Index of Consumer Prices
<b>CPI</b>	consumer price index	<b>ILO</b>	International Labour Organization
<b>DG ECFIN</b>	Directorate General for Economic and Financial Affairs, European Commission	<b>IMF</b>	International Monetary Fund
<b>ECB</b>	European Central Bank	<b>MFI</b>	monetary financial institution
<b>EDP</b>	excessive deficit procedure	<b>MIP</b>	macroeconomic imbalance procedure
<b>EER</b>	effective exchange rate	<b>MTO</b>	medium-term budgetary objective
<b>EMI</b>	European Monetary Institute	<b>NCB</b>	national central bank
<b>EMU</b>	Economic and Monetary Union	<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>ERM</b>	exchange rate mechanism	<b>SGP</b>	Stability and Growth Pact
<b>ESA 2010</b>	European System of Accounts 2010	<b>SSM</b>	Single Supervisory Mechanism
<b>ESCB</b>	European System of Central Banks	<b>TSCG</b>	Treaty on Stability, Coordination and Governance in the Economic and Monetary Union
<b>ESRB</b>	European Systemic Risk Board		
<b>EU</b>	European Union		
<b>EUR</b>	euro		

### Conventions used in the tables

- data do not exist/data are not applicable

. data are not yet available

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