



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 4 August 2005

at the request of Národná banka Slovenska on a draft law amending the Act No 566/1992 Coll. on Národná banka Slovenska, as amended, and on amendments to certain laws

(CON/2005/26)

1. On 20 June 2005 the European Central Bank (ECB) received a request from Národná banka Slovenska (NBS) for an opinion on a draft law amending the Act No 566/1992 Coll. on Národná banka Slovenska, as amended, and on amendments to certain laws (hereinafter the 'draft law').
2. The ECB's competence to deliver an opinion is based on the first and third indents of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions¹, as the draft law contains provisions concerning currency matters and a national central bank (NCB). In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.
3. According to the general part of the proposal report accompanying the draft law, the draft law's main objective is to reflect the change in NBS's competence in relation to integrated supervision of the whole financial market in the Slovak Republic. This aim is to be achieved in particular by amending the Act No 566/1992 Coll. on Národná banka Slovenska, as amended (hereinafter the 'NBS Act'). In this regard it is recalled that the ECB was consulted and issued an opinion in 2004 on the transfer of responsibility for the supervision of the non-banking financial sector (capital markets, insurance and pensions) from the Slovak Financial Market Authority to NBS from 1 January 2006². Furthermore, the draft law contains miscellaneous (in some cases recasted) provisions of the NBS Act relating to, *inter alia*: (i) the submission by NBS of periodic reports on monetary developments to the National Council of the Slovak Republic (hereinafter the 'National Council'); (ii) the designation of NBS as the Slovak national centre for the analysis and monitoring of counterfeit euro banknotes and coins; (iii) the conduct of open market operations and the collateralisation of credit operations by NBS; (iv) the performance of fiscal agency functions by NBS for the Slovak Republic; and (v) certain initial preparations for the future introduction of the euro as the currency of the Slovak Republic.

¹ OJ L 189, 3.7.1998, p. 42.

² See ECB Opinion CON/2004/31 of 22 September 2004 at the request of Národná banka Slovenska on a draft law on supervision of the financial market and on amendments to certain laws.

4. Under existing provisions of Slovak law, NBS has the task of supervising the safe functioning of the banking system and of contributing to the stability of the financial system as a whole. In line with NBS's wider supervisory responsibilities, the draft law provides that, in the area of the financial market, NBS will contribute to the stability of the financial system as a whole as well as to the secure and sound functioning of the financial market in the interests of sustaining the credibility of the financial market, the protection of clients and respect for competition rules. As noted in paragraph 10 of ECB Opinion CON/2004/31, the ECB 'favours recognising in the supervisory framework the clear distinction between the two goals of financial stability and investor protection.' The ECB therefore welcomes these provisions of the draft law, which will adequately balance NBS's macro and micro-prudential responsibilities in the areas of financial stability and the protection of investors.
5. The ECB takes note that the draft law further adjusts the competences and composition of NBS's Bank Board (hereinafter the 'Board'), increasing the number of Board members from eight to eleven in order to broaden the representation of specialists from the field of supervision of the capital market, insurance and pensions, and widening the Board's competences to include the supervision and regulation of the Slovak financial market.
6. The draft law amends Article 3 of the NBS Act relating to the submission by NBS of semi-annual and annual reports on monetary developments to the National Council. The ECB understands that the reports are submitted to the National Council for information purposes only, and that the deliberations³ of the National Council thereon do not imply that the reports are required to be adopted or approved by the National Council.
7. The ECB notes that pursuant to the draft law, Article 7(9) of the NBS Act will stipulate that unless Article 14.2 of the Statute of the European System of Central Banks and of the European Central Bank provides otherwise, a member of the Board may only be removed from office in the event that: (a) they have been legally sentenced by a court for an intentional criminal offence; (b) they no longer fulfil the preconditions for performing the office of a member of the Board; or (c) they have taken up an office, occupation, employment, or activity that is incompatible with membership of the Board or have otherwise breached the provisions of the NBS Act governing conflicts of interest.
8. As noted on page 27 of the ECB Convergence Report 2004, 'NCB statutes must ensure that Governors may not be dismissed for reasons other than those mentioned in Article 14.2 of the Statute. [...] The NCB statutes should either contain grounds for dismissal which are compatible with those laid down in Article 14.2 of the Statute, or omit any mention of grounds for dismissal since Article 14.2 is directly applicable.' The report goes on to say that 'Personal independence would be jeopardised if the same rules for the security of tenure of office of Governors were not also applied to other members of the decision-making bodies of NCBs involved in the performance

³ Article 2(2)(ch) of the Act No 350/1996 Coll. on the rules of procedure of the National Council of the Slovak Republic, as last amended.

of ESCB-related tasks. Various Treaty and Statute provisions require comparable security of tenure. Article 14.2 of the Statute does not restrict the security of tenure of office to Governors, whilst Article 108 of the Treaty and Article 7 of the Statute refer to any members of decision-making bodies of NCBs rather than to Governors specifically. This applies in particular where a Governor is *primus inter pares* between colleagues with equivalent voting rights or where such other members may have to deputise for the Governor.’ Therefore, the ECB would strongly recommend referring to Article 14.2 of the Statute when stating the reasons for dismissal of a Board member.

9. The ECB also takes note of the provisions of the draft law pursuant to which NBS will fulfil the functions and tasks of national centres for the analysis and monitoring of counterfeit euro banknotes and coins⁴. In this regard the ECB notes that NCBs in certain other Member States have also been given this particular task.
10. Regarding the conduct of open market operations and the collateralisation of central bank credit operations, the ECB notes that NBS is currently only entitled to purchase from (or sell to) banks bills of exchange maturing within six months and government bonds (or other securities guaranteed by the Government), which it may hold for a maximum period of one year, and to provide banks with loans secured by such securities. Under the draft law NBS will be entitled to deal in any securities it has specified with banks, foreign banks and other financial institutions. NBS will also be entitled to accept assets it has specified as security in its credit operations. The ECB welcomes this more flexible statutory framework, which is more in line with the statutory framework for the Eurosystem’s monetary policy and intraday credit operations. In this regard, it is noted that Article 18.1 of the Statute provides that the NCBs may operate in the financial markets by buying and selling outright (spot and forward) or under repurchase agreement and by lending or borrowing claims and marketable instruments, and may conduct credit operations with credit institutions and other market participants, with lending being based on adequate collateral.
11. The ECB takes note that the draft law amends the provisions of the NBS Act regarding the operations of NBS with the Slovak Republic. In particular the draft law provides that NBS may maintain the accounts of the State Treasury and provide additional services to, and cooperate with, the State Treasury and the Agency for Debt and Liquidity Management, subject to more detailed regulation contained in separate legislation, primarily Act No 291/2002 on the State Treasury and on amendments to certain laws (hereinafter the ‘State Treasury Act’). Article 11(1) of the State Treasury Act provides that NBS maintains the ‘single account’ of the State Treasury, which is a memorandum account containing a summary of the balances of all accounts of the State Treasury held with NBS. NBS also maintains a State Treasury settlement account to cover and meet liabilities arising from participation in the payment system pursuant to Act No 510/2002 Coll. on the payment system and on amendments to certain laws, as amended, and the State Treasury’s foreign exchange accounts, including the account holding funds of the European Communities, the

⁴ This provision implements Articles 4 and 5 of Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting (OJ L 181, 4.7.2001, p. 6).

balances of which are recorded in the single account⁵. NBS is also authorised: (i) to carry out cross-border transfers⁶ for, and to enable cash withdrawals and deposits⁷ by, clients of the State Treasury; (ii) to provide additional services to, and to cooperate with, the State Treasury and the Agency for Debt and Liquidity Management in their respective fields of competence⁸; and (iii) to carry out foreign currency transfers for the Agency for Debt and Liquidity Management on behalf of the State Treasury⁹. Finally, the State Treasury Act provides that agreements between the State Treasury and NBS govern the holding of accounts of the State Treasury with NBS, clearing on such accounts and the conduct of additional services by NBS for the State Treasury, including the conditions and means of remuneration on credit balances of the State Treasury's accounts held with NBS and recorded in the single account¹⁰.

12. The operations conducted by NBS with the Slovak Republic are, generally speaking, operations of a kind that are performed by most, if not all, NCBs within the European System of Central Banks (ESCB). This is in accordance with Article 21.2 of the Statute, which provides that the ECB and the NCBs may act as fiscal agents for Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States. The ECB notes that both the draft law and the State Treasury Act contain important safeguards ensuring the compatibility of such operations with the prohibition on monetary financing contained in Article 101(1) of the Treaty establishing the European Community. In particular, the draft law provides that NBS may execute payments from the accounts of the State Treasury only up to the amount of any credit balance on such accounts. In addition, the State Treasury Act provides that the accounts of the State Treasury held with NBS must have a credit balance¹¹. The ECB welcomes these provisions, which exclude the possibility of contravening the Treaty prohibition on overdraft facilities or any other type of credit facility by NBS in favour of the State Treasury as laid down in Article 102. Regarding additional services provided by NBS to the State Treasury and the Agency for Debt and Liquidity Management, the ECB notes that these activities are permissible insofar as they form part of an NCB's fiscal agency function under Article 21.2 of the Statute, together with the other relevant provisions of Community law¹². The ECB notes that the services currently provided by NBS to the State Treasury and the Agency for Debt and Liquidity Management do not appear to go beyond the scope of what is permissible. Finally, regarding the detailed contractual provisions agreed between the State

5 See Article 21(1) of the State Treasury Act.

6 See Article 6(1)(n) of the State Treasury Act.

7 See Article 12(4) of the State Treasury Act.

8 See Article 17(n) of the State Treasury Act.

9 See Article 19(2) of the State Treasury Act.

10 See Article 21(1) of the State Treasury Act.

11 See Article 11(2) of the State Treasury Act.

12 More detailed provisions defining the scope of the Treaty prohibition on monetary financing, including with respect to the performance of a NCB's fiscal agency function, are contained in Council Regulation (EC) No 3603/93 of 13 December 1993 specifying the definitions for the application of the prohibition referred to in Articles 104 and 104b(1) of the Treaty (OJ L 332, 31.12.1993, p. 1).

Treasury and NBS on the holding, clearing and remuneration of the State Treasury's accounts with NBS, the ECB understands that these contracts fully comply with the abovementioned safeguards and provisions of Community law.

13. The ECB takes particular note of the draft law's provisions regarding the future introduction of the euro as the currency of the Slovak Republic. In particular, the ECB welcomes the fact that NBS has been given the task of ensuring the performance of preparatory activities for the introduction of the euro as the monetary unit and legal tender in the Slovak Republic. The ECB emphasises the strong synergy between this task of NBS under Slovak law and the responsibility of the ECB's General Council (of which the Governor of NBS is a member) under Article 47.3 of the Statute to contribute to the necessary preparations for irrevocably fixing the exchange rates of the currencies of Member States with a derogation against the euro. The ECB also notes that, under the draft law, NBS must ensure that the Slovak side of euro coins contains the inscription 'Slovakia' or 'Slovak Republic'. This provision is in line with the recent conclusions of the Council (ECOFIN) at its meeting held in Luxembourg on 7 June 2005, which concluded that since euro coins circulate throughout the euro area, Member States should put a clear indication of the issuing Member State on the national side of euro coins by means of a Member State's name or an abbreviation of it. Finally, the ECB notes that the draft law excludes the application to euro banknotes and coins of certain provisions of national law that would otherwise apply to banknotes and coins, such as Article 3(6)(i) of Act No 63/1993 Coll. on state symbols of the Slovak Republic and their use.
14. This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 4 August 2005.

[signed]

The President of the ECB

Jean-Claude TRICHET