



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK**of 16 November 2005****at the request of the Ministry of Justice of the Slovak Republic on a draft law
on criminal liability of legal persons and on amendments to certain laws****(CON/2005/47)**

1. On 6 October 2005 the European Central Bank (ECB) received a request from the Ministry of Justice of the Slovak Republic for an opinion on a draft law on criminal liability of legal persons and on amendments to certain laws (hereinafter the 'draft law').
2. The ECB's competence to deliver an opinion is based on the second indent of Article 105(4) of the Treaty establishing the European Community and, in particular, on the first, second 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, means of payment 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. The draft law forms part of the general reform of Slovak criminal law. It has several objectives. First, it implements a number of Community legal acts such as Council Framework Decision of 29 May 2000 (2000/383/JHA) on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro² and Council Framework Decision of 28 May 2001 (2001/413/JHA) combating fraud and counterfeiting of non-cash means of payment³. Second, as a *lex specialis* to the recently adopted Slovak Criminal Code⁴ and Code of Criminal Procedure⁵, it regulates the concept of criminal liability of legal persons in the Slovak legal order by way of a separate law. According to the general part of the explanatory memorandum to the draft law, the draft law lays down the conditions defining the criminal liability of legal persons, the types of sanctions and protective measures that can be imposed on them and the procedure to be followed by the law-enforcement authorities in cases where the indicted person is a legal person.

1 OJ L 189, 3.7.1998, p. 42.

2 OJ L 140, 14.6.2000, p. 1.

3 OJ L 149, 2.6.2001, p. 1.

4 Criminal Code of 20 May 2005, Act No 300/2005 Coll. (enters into force on 1 January 2006).

5 Code of Criminal Procedure of 24 May 2005, Act No 301/2005 Coll. (enters into force on 1 January 2006).

4. The ECB takes note that the draft law not only excludes the Slovak State and State authorities, but also Národná banka Slovenska (NBS) from its scope of application, since, as the explanatory note to Article 2(1) of the draft law states, it is unreasonable to expect the State to sanction itself including its authorities and NBS. The ECB understands that the Slovak legislator, by listing NBS separately from the Slovak State and State authorities, wishes to differentiate clearly between the State and State authorities on the one hand, and NBS on the other.
5. The ECB welcomes the implementation of Council Framework Decision 2000/383/JHA and Council Framework Decision 2001/413/JHA. As early as 1998, the ECB recommended to the Council, the Parliament, the Commission and the Member States that certain measures should be adopted to enhance the legal protection of euro banknotes and coins⁶. As far as the exclusion of NBS from the scope of the draft law is concerned, the ECB would like to point out two specific issues. First, the exemption of NBS from the scope of criminal responsibility does not as such have an impact on the principle of central bank independence. Second, the ECB welcomes the intention of the Slovak legislator to differentiate in the draft law clearly between the State and the State authorities on the one hand, and NBS on the other. While, as also pointed out in the explanatory note to Article 2(1) of the draft law, NBS safeguards the tasks of the State to a considerable extent, the ECB would like to emphasise that NBS is a member of the European System of Central Banks under the provisions of the Treaty and the Statute of the European System of Central Banks and of the European Central Bank. The distinction made in the draft law between NBS and the Slovak State and State authorities would strengthen the principle of central bank independence laid down in Article 108 of the Treaty. In order to make this distinction clearer, however, Article 2(1) of the draft law could be drafted more unambiguously to state that NBS is not a State authority. This statement would comply fully with the Slovak Constitution⁷ and NBS's statute⁸, which refer to NBS as 'the independent central bank of Slovak Republic'.
6. This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 16 November 2005.

[signed]

The President of the ECB

Jean-Claude TRICHET

⁶ Recommendation of the Governing Council of the European Central Bank of 7 July 1998 regarding the adoption of certain measures to enhance the legal protection of euro banknotes and coins (OJ C 11, 15.1.1999, p. 13).

⁷ Article 56 of the Constitution of the Slovak Republic No 460/1992 Coll., as last amended.

⁸ Article 1(1) of the Act No 566/1992 Coll. on Národná banka Slovenska, as last amended.