



OPINION OF THE EUROPEAN CENTRAL BANK

of 2 September 2008

**at the request of the Slovak Ministry of Defence and of the Slovak Ministry of Labour,
Social Affairs and Family on draft laws laying down further detailed rules on the
euro changeover falling within their field of competence**

(CON/2008/40)

Introduction and legal basis

On 28 July 2008 the European Central Bank (ECB) received a request from the Slovak Ministry of Defence for an opinion on a draft law amending certain laws in the field of defence in relation to the euro introduction (hereinafter the ‘first draft law’)¹ and on 30 July 2008 the ECB received a request from the Slovak Ministry of Labour, Social Affairs and Family on a draft law amending certain laws in the field of its competence in relation to the euro introduction (hereinafter the ‘second draft law’)², a draft law on civil service and on amendments to certain laws (hereinafter the ‘third draft law’)³, a draft law amending the Law No 533/2003 Coll. on remuneration of certain employees performing work in the public interest and on amendments to certain laws (hereinafter the ‘fourth draft law’)⁴, a draft law amending the Law No 283/2002 Coll. on reimbursement of travel expenses (hereinafter the ‘fifth draft law’), a draft law amending the Law No 599/2003 Coll. on assistance in material need and on amendments to certain laws, and amending the Law No 453/2003 Coll. on state administration bodies in the field of social affairs, family and employment services and on amendments to certain laws (hereinafter the ‘sixth draft law’)⁵ and a draft law on child care allowance and on amendments to certain laws⁶ (hereinafter the ‘seventh draft law’).⁷

¹ The first draft law consists of five amendments to specific laws falling within the field of competence of the Slovak Ministry of Defence.

² The second draft law consists of six amendments to specific laws falling within the field of competence of the Slovak Ministry of Labour, Social Affairs and Family.

³ The third draft law consists of 10 amendments to specific laws falling within the field of competence of the Slovak Ministry of Labour, Social Affairs and Family, but only four of them are relevant to this consultation.

⁴ The fourth draft law consists of two amendments to specific laws falling within the field of competence of the Slovak Ministry of Labour, Social Affairs and Family, but only one of them is relevant to this consultation.

⁵ The sixth draft law consists of two amendments to specific laws falling within the field of competence of the Slovak Ministry of Labour, Social Affairs and Family, but only one of them is relevant to this consultation.

⁶ The seventh draft law consists of three amendments to specific laws falling within the field of competence of the Slovak Ministry of Labour, Social Affairs and Family, but only two of them are relevant to this consultation.

⁷ For ease of reference, each draft law is divided into sections and subsequently into points and articles, if necessary, within each section.

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the first and second 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 provisions⁸, as the draft laws relate to currency matters and means of payment. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. Purpose of the draft laws

The purpose of the draft laws is to facilitate the smooth euro changeover in Slovakia. All of them provide for technical details concerning the introduction of the euro and specific provisions relate to conversion and rounding of certain amounts and to foreign exchange rates. As specific legislative measures, all of the draft laws should be in accordance with the general legal framework established by the Law No 659/2007 Coll. on the introduction of the euro in Slovakia and on amendments to certain laws (hereinafter the 'Slovak Euro-Law').

2. General observations

The Slovak authorities have already consulted the ECB on issues relating to the euro changeover. The ECB would therefore like to concentrate in this opinion on issues that were not addressed in its previous opinions⁹ and which are also significant for other Slovak authorities with regard to draft legislative provisions on the introduction of the euro falling within their competence and currently submitted to the legislative process in Slovakia¹⁰. Among these issues, the following should be highlighted: (i) specific aspects of conversion and rounding of certain amounts in relation to the principle of neutrality; (ii) foreign exchange reference rates.

⁸ OJ L 189, 3.7.1998, p. 42.

⁹ See ECB Opinion CON/2007/43 of 19 December 2007 at the request of the Slovak Ministry of Finance on a draft law on the introduction of the euro in Slovakia and on amendments to certain laws; ECB Opinion CON/2008/23 of 30 May 2008 at the request of Národná banka Slovenska on a draft decree laying down rules for the dual display of certain prices, payments and other amounts and on a draft decree laying down the number of decimal places of certain types of securities for the purpose of rounding by redenomination of their nominal value from the Slovak currency to the euro; ECB Opinion CON/2008/25 of 12 June 2008 at the request of the Slovak Ministry of Finance on a draft decree laying down the scope of prices, payments and other amounts subject to dual display with regard to the field of gambling games and methods of their dual display; and ECB Opinion CON/2008/27 of 1 July 2008 at the request of the Slovak Ministry of Labour, Social Affairs and Family on a draft decree laying down further detailed rules on the dual display, conversion and rounding of certain prices, payments and other amounts in the labour law and social security sectors on the euro changeover.

¹⁰ Apart from requests received from the Slovak Ministry of Defence and the Slovak Ministry of Labour, Social Affairs and Family, the ECB has also been consulted either officially or informally by the Slovak Ministry of Education (on eight draft laws), Národná banka Slovenska (on two draft decrees), the Slovak Ministry of Interior (on 38 draft laws), the Slovak Ministry of Transport, Post and Telecommunication (on six draft laws), the Slovak Ministry of Culture (on one draft law), the Slovak Ministry of Justice (on 24 draft laws), the Slovak Ministry of Health (on 14 draft laws and one draft decree), the Slovak Ministry of Finance (on 17 draft laws) and the Slovak Ministry of Environment (on 22 draft laws and one draft decree) in each case in relation to the same or very similar issues relating to the euro changeover.

3. Specific observations on the first draft law

Foreign exchange reference rates

3.1 The general provisions establishing the system for setting and publishing foreign exchange rates are laid down in Article 17(2) of the Slovak Euro-Law and in new Articles 28(2) and 49ab(6) of the Law on Národná banka Slovenska¹¹. This system applies from the date of introduction of the euro in Slovakia, after which: (i) the respective exchange rates between the euro and other currencies are set and published by the ECB; and (ii) other relevant exchange rates between the euro and other currencies are set and published by Národná banka Slovenska in the event the ECB does not set and publish the rates for such currencies, unless otherwise agreed by the parties to the respective legal relationship or provided for in a separate legal act. The provision proposed pursuant to Point 22 in Section III of the first draft law states that: '[...] if the prepayment was made in a currency other than euro, the exchange rate for such currency published by Národná banka Slovenska on the first day of the month in which the prepayment is deducted shall be used.' This provision should be aligned with the abovementioned provisions of the Slovak Euro-Law in order to recognise the role of the ECB and the Council of the European Union in the field of exchange rate policy¹² in accordance with Article 111 of the Treaty and Article 12.1 of the Statute.

Rounding rules and principle of neutrality

3.2 Article 7 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro¹³ lays down the principle that 'The substitution of the euro for the currency of each participating Member State shall not in itself have the effect of altering the denomination of legal instruments in existence on the date of substitution' (hereinafter the 'principle of neutrality'). Moreover, pursuant to Article 5 of Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro¹⁴, any monetary amount to be paid or accounted for must be rounded up or down to the nearest cent. This provision is reflected in the first and second sentences of Article 2(3) of the Slovak Euro-Law¹⁵. The last sentence of Article 2(3) of the Slovak Euro-Law introduced the rule 'in favour of citizens', thereby allowing the national legislator to deviate from the general legal framework for the euro changeover by adopting a specific law in relation to the

¹¹ See the Law No 566/1992 Coll. on Národná banka Slovenska.

¹² The ECB notes that a comparable legal technique is already applied in the second draft law (see the second sentence of the provision proposed pursuant to Point 8 of Section I), in Article 111(7) in Section I of the third draft law and also in another provision of the first draft law (see the provision proposed pursuant to Point 20 of Section III).

¹³ OJ L 139, 11.5.1998, p. 1.

¹⁴ OJ L 162, 19.6.1997, p. 1.

¹⁵ The first and second sentences of Article 2(3) of the Slovak Euro-Law provide: 'If calculation of conversion from the Slovak currency to euros in accordance with the conversion rate results in final financial amounts in euro which shall be actually paid or accounted (hereinafter 'final amounts'), in particular final amounts accounted in statements of account or final amounts of price, payment or other value stated in invoices, other accounting documents or payment documents, such final amount in euro shall, after conversion in accordance with the conversion rate, be rounded to a number with two decimal places, i.e. to the nearest euro cent, pursuant to rules set out in a separate legal provision. The total calculated remainder of a final amount which is lower than one half of one euro cent, shall, pursuant to a separate legal provision, be rounded down to the nearest euro cent, and the total calculated remainder of a final amount which is higher than one half of one euro cent, shall, pursuant to a separate legal provision, be rounded up to the nearest euro cent, unless all parties to the respective legal relationship agree otherwise or a separate legal provision stipulates otherwise.'

rounding up or down of amounts to be paid or accounted for depending on whether such amounts are income or expenditure of the State budget¹⁶. Moreover, in line with existing rules and practices¹⁷ for rounding of such amounts in Slovak legislation, the respective amounts were rounded up or down to 50 haliers, to the nearest Slovak koruna, and to the nearest SKK 10, 100 or 300, etc. As a consequence of the application of these rules and practices, the amounts to be paid or accounted for as stated in all the draft laws¹⁸, e.g. in the provisions proposed pursuant to Point 5 of Section II of the first draft law¹⁹, Point 5 of Section I of the second draft law, Point 14 of Section I of the fourth draft law²⁰, Point 5 of Section I of the sixth draft law²¹ and Point 17 of Section III of the first draft law, are rounded up or down to the nearest cent, to the nearest 10 or 50 cent, to the nearest euro or to the nearest EUR 10. Furthermore, amounts are rounded inconsistently, even in the case of the same type or category of amount.

The ECB would like to point out that the rounding of amounts to be paid or accounted for up or down to more than one cent is not *per se* in accordance with Article 5 of Regulation (EC) No 1103/97 and Article 7 of Regulation (EC) No 974/98. Nevertheless, the principle of neutrality²² must not prevent the national legislator from using its sovereign powers when expressing monetary amounts such as fines, fees, minimum capital, taxes, allowances, salaries, etc. in legislative provisions.

Accordingly, the national legislator remains free to legislate on the increase or decrease of any monetary amounts while addressing euro changeover matters. In doing so, however, it is bound to act in accordance with the principles of legal certainty and transparency, i.e. it must ensure that economic agents are able to make a clear distinction²³ between a decision of the Member State's

16 The last sentence of Article 2(3) of the Slovak Euro-Law provides that 'Final amounts representing revenues of the State budget or another type of general government budget shall preferentially be rounded down in favor of the persons obliged to make the respective payments, and final amounts representing expenditures of the state budget or another type of general government budget shall preferentially be rounded up in favor of the persons entitled for receipt of the respective payments, unless a separate legal provision stipulates otherwise.'

17 A different approach to the methodology of rounding is derived from all of the following: (a) the relationship between rounded amounts and time units, i.e. either hours or months; (b) the levels of rounding applied until now, which start with rounding to tens of haliers in respect of hourly rate units, and end with rounding to hundreds of korunas in respect of monthly wages and lump sum reimbursements for certain groups of people; and (c) the source of funds, which is either the State budget or a municipal budget (general government budget), or expenses paid by an employer; this factor also has an impact on the direction of rounding of a particular amount.

18 It should be noted that rounding of certain monetary amounts in whole Slovak korunas up or down to 10 cent is recognised pursuant to the Law No 461/2003 Coll. on social insurance, which has already been adopted.

19 For rounding up or down to the nearest euro, see also the provision proposed pursuant to Point 1 of Section III of the second draft law, Article 113(8) in Section I of the third draft law and the provision proposed pursuant to Point 25 of Section III of the first draft law.

20 For rounding up or down to 50 cent see also the provisions proposed pursuant to Point 15 of Section I and Point 18 of Section I of the fourth draft law, and Article 137(3) in Section I of the third draft law.

21 For rounding up or down to the nearest cent see also the provisions proposed pursuant to Point 2 of Section IV and Point 4 of Section VI of the second draft law, Point 5 of Section I of the sixth draft law and Point 43 of Section I of the fifth draft law.

22 As stated in paragraph 25 of Case C-359/05 *Estager v Receveur principal de la recette des douanes de Brive* [2007] ECR I-00581 'The principle of the continuity of legal instruments and the objective that the transition to the euro should be neutral apply to the "terms" or to the "wording" of the "legal instruments" within the meaning of Regulations No 1103/97 and No 974/98'.

23 It applies not only to legislative acts, but also to implementing measures or other legal instruments, e.g. collective agreements governing the issue of rounding of certain monetary amounts up or down to more than one cent. See for

authorities to increase or decrease any amount and the process of converting that amount into euro and rounding it²⁴. The national legislator is therefore obliged to act in accordance with the abovementioned principles when applying the provisions of the Slovak Euro-Law which permit certain amounts to be rounded up ‘in favour of citizens’.

Finally, in the light of its Opinion CON/2008/23²⁵, the ECB would also like to emphasise that the same rounding method and a consistent approach should be used in draft legislative provisions for monetary amounts of a comparable type and/or category.

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

Done at Frankfurt am Main, 2 September 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET

example the provision proposed pursuant to Point 9 of Section I of the second draft law, which states that ‘Paid out wages shall be rounded up to the nearest euro cent unless the collective agreement or employer in an internal implementing regulation provide for more favourable arrangements for employees with regard to rounding of wages’.

²⁴ The Court held in *Estager* that ‘Council Regulation (EC) No 1103/97 ... and Council Regulation (EC) No 974/98 ... must be interpreted as precluding national legislation which, on effecting the conversion into euros of an amount ... raised it to an amount higher than that which would have resulted from application of the rules of conversion provided for in those regulations, unless such an increase meets the requirements of legal certainty and transparency guaranteed by those regulations, which presupposes that the legislative texts at issue make it possible to distinguish clearly the decision of the authorities of a Member State to increase that amount from the operation of conversion of that amount into euros.’ See also paragraphs 34, 35 and 37 of the judgment in *Estager*.

²⁵ See paragraph 4 of ECB Opinion CON/2008/23.