



OPINION OF THE EUROPEAN CENTRAL BANK

of 10 June 2011

on Národná banka Slovenska's role as regards financial supervision and consumer credit

(CON/2011/49)

Introduction and legal basis

On 29 April 2011 the European Central Bank (ECB) received a request from the Slovak Ministry of Finance for an opinion on a draft law amending Law No 492/2009 Coll. on Payment Services and on amendments to certain laws, as amended by Law No .../2011 Coll., and amending certain laws (hereinafter the 'draft law').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the third and fifth 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 relates to Národná banka Slovenska (hereinafter 'NBS') and payment and settlement systems. 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 law

- 1.1 The main purpose of the draft law is to transpose Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC², and Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies³.
- 1.2 This opinion only addresses those draft law provisions that go beyond the mere transposition of Directives 2009/110/EC and 2010/76/EU⁴. These relate to: (a) limited providers'⁵ notification

¹ OJ L 189, 3.7.1998, p. 42.

² OJ L 267, 10.10.2009, p. 7.

³ OJ L 329, 14.12.2010, p. 3.

⁴ This applies to Law No 492/2009 Coll. on payment services; Law No 747/2004 Coll. on supervision in the financial market; and Law No 129/2010 Coll. on consumer credits and other credits and loans for consumers.

⁵ See Article 3(k) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007, p.1).

obligations towards NBS; (b) the NBS's role in the European System of Financial Supervision (ESFS); (c) the calculation of the annual contributions paid by supervised entities to NBS; (d) the obligation on creditors to report data on newly-provided consumer credits to NBS; (e) fine-tuning and eliminating ambiguity in procedures related to supervision.

2. General observations

The ECB notes that it was not consulted on the draft of Law 129/2010 Coll., which was adopted on 9 March 2010 and which conferred certain tasks on NBS. Issues relevant to national central banks are expressly listed among the areas of the ECB's competence. Therefore, the ECB reminds the Slovak authorities that they should honour their obligation under the Treaty to consult the ECB, in accordance with Decision 98/415/EC.

3. Specific observations

3.1 *NBS's role in the ESFS*

Article 1(3)(e) of Law No 747/2004 Coll. deals with NBS's obligation to exchange information and cooperate at national and international level. The draft law amends this provision to expressly reflect NBS's role in the ESFS. The tasks related to cooperation and exchange of information have already been conferred on national supervisory authorities by virtue of directly applicable Union regulations⁶. Therefore, they do not need to be transposed into the domestic law of Member States⁷. The draft amendment to Article 1(3)(e) of Law 747/2004 Coll. alters the content of the abovementioned Union regulations by restricting the exchange of information to the scope necessary for the supervision of supervised entities by NBS, excluding other areas, such as macro-prudential analysis. The ECB therefore suggests adapting the current scope of the exchange of information in Article 1(3)(e), so as to exclude its restrictive effect.

Provided that the amendments referring to NBS's participation in the ESFS and to NBS's obligation to provide for the discharge of tasks arising from legally binding Union acts are adopted, the last sentence of Article 4(3) of Law No 747/2004 Coll. will no longer be necessary.

⁶ See Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1); Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12); Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48); Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

⁷ See paragraph 2.4. of Opinion CON/2006/29, paragraph 3.2.3 of Opinion CON/2006/55 and paragraph 2.2.(including footnotes 5 and 6) of Opinion CON/2007/43.

3.2 *Calculation of the annual contributions paid by supervised entities*

Under the draft amendment to Article 40(2) of Law No 747/2004 Coll., the calculation of annual contributions paid by supervised entities to NBS is amended so that the volume of assets will, for the purposes of the annual contribution calculation, not include assets used exclusively in the conduct of non-supervised commercial activities. Such non-supervised commercial activities may include commercial activities of a payment institution or limited issuance of electronic money by an electronic money institution. Under the draft law, the contributor is responsible for notifying NBS of the volume of assets to be used in calculating the contribution. The NBS may verify the amount and request additional information and documentation. In addition, the draft law abolishes the maximum amount of annual contributions for certain supervised entities that are legal entities or branches of foreign legal entities.

Based on these amendments, NBS's final revenue from such contributions will change. Therefore, it should be ensured that this does not undermine NBS's financial independence.

3.3 *Obligation for creditors to report data on newly-provided consumer credits to NBS*

The obligation for creditors to report data on newly-provided consumer credits to NBS was already included in Law No 129/2010 Coll. and the amendments introduced by the draft law on this issue only relate to personal data protection⁸. Nevertheless, Law No 129/2010 Coll. could provide more clarity on the respective responsibilities of the Ministry of Finance, NBS and 'the person designated by them' with regard to the processing and disclosure of these data⁹.

Financing of a new task by a national central bank has to be in line with the principle of financial independence, under which it must have sufficient means to perform not only its European System of Central Banks tasks, but also its national tasks, e.g. financing its administration and own operations¹⁰.

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

Done at Frankfurt am Main, 10 June 2011.

[signed]

The President of the ECB

Jean-Claude TRICHET

⁸ Article VI(14) of the draft law.

⁹ Article 21(2) of Law No 129/2010 Coll.

¹⁰ See the ECB's convergence report, May 2010, p. 21.