



OPINION OF THE EUROPEAN CENTRAL BANK

of 16 July 2012

on the bank levy and contributions to the deposit guarantee scheme

(CON/2012/53)

Introduction and legal basis

On 12 June 2012 the European Central Bank (ECB) received a request from the Slovak Ministry of Finance for an opinion on a draft law amending Law No 384/2011 on a special levy on selected financial institutions and on amendments to certain laws, and Law No 118/1996 on the protection of deposits and on amendments to 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 sixth indent 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 rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. 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

The purpose of the draft law is to amend Law No 384/2011, on the draft of which the ECB issued Opinion CON/2011/66, and Law No 118/1996. The proposed amendments concern the following areas:

1.1 Rules concerning the bank levy.

Under the draft law, the levy introduced by Law No 384/2011 will no longer exclude from its base the value of: (a) deposits received by a bank or the branch of a foreign bank (hereinafter the ‘bank’) within the territory of the Slovak Republic and protected within the Slovak Deposit Protection Fund (hereinafter the ‘Fund’); and (b) deposits received by a bank within the territory of the Slovak Republic and protected in other Member States of the European Economic Area². Moreover, the draft law imposes an obligation for banks to pay, together with the instalment of the regular bank levy for the last quarter of 2012, an extraordinary one-off levy of 0.1% of the bank levy base³. This extraordinary levy is intended to support the development programmes of the Slovak government and to enhance own sources of funding for legal

¹ OJ L 189, 3.7.1998, p. 42.

² Article I(1) of the draft law.

³ Article I(5) of the draft law (proposed new Article 7(1)).

entities established to promote the foreign trade operations of exporters and importers⁴. Finally, the draft law also introduces a provision⁵ under which the bank may neither increase, nor introduce, new financial consideration⁶ to cover higher costs triggered by the increased levy. If there is an increase in financial consideration which is unrelated to the payment of the levy, the grounds for the increase will need to be disclosed.

1.2 *Rules concerning contributions to the Fund.*

Under Law No 118/1996 the Fund itself determines the amount of annual contributions which it receives from the member banks. Under the draft law, the amount will be determined either by Law No 118/1996 or by the Fund.⁷ At the same time, the draft law establishes that the member banks will not pay any contributions to the Fund in 2013.⁸

2. **Financing and governance of a bank resolution fund**

- 2.1 Law No 384/2011 introducing the bank levy specified that its sole purpose is the provision of financing to a dedicated resolution mechanism for banks⁹. The ECB recommended in its previous opinion the introduction of: (a) a clear separation between the extra-budgetary account created out of the levy proceeds and the general budgetary resources; and (b) detailed rules on the application of the resolution fund to finance the bank resolution measures¹⁰. The ECB reiterates those recommendations, given that they have not been taken into account in Law No 384/2011. At the same time, the ECB invites the Slovak authorities to take into account that their approach may need to be adjusted in the light of ongoing harmonisation of the Union framework for bank recovery and resolution¹¹.
- 2.2 Further, the ECB notes that the obligation to pay the bank levy under Law No 384/2011 applies among others to Slovak branches of credit institutions located in other Member States. As already pointed out by the ECB, this may lead to double charging of a bank levy by the Slovak authorities and by the authorities of the relevant home Member State¹². The ECB reiterates its recommendation that the Slovak authorities should address the risk of double charging adequately following the harmonised solutions which are being developed in this respect at Union level¹³.

4 Article I(5) of the draft law (proposed new Article 7(2)).

5 Article I(5) of the draft law (proposed new Article 6(1)).

6 Financial considerations include, *inter alia*, prices, charges, fees and interest rates. See also the specific part of the explanatory memorandum relating to Article I(5).

7 Article II(2) of the draft law.

8 Article II(3) of the draft law.

9 Article 4(3) of Law No 384/2011. See paragraph 3.1 of the Opinion CON/2011/66. All ECB opinions are available on the ECB's website at www.ecb.europa.eu.

10 Paragraphs 3.2.1-2 of the Opinion CON/2011/66.

11 See the proposal for a directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No 1093/2010, COM(2012) 280 final (hereinafter the 'proposed directive on bank recovery and resolution').

12 Paragraph 2.1 of Opinion CON/2011/66.

13 See, in particular, Article 94(1) of the proposed directive on bank recovery and resolution.

- 2.3 The extraordinary one-off levy introduced by the draft law is unrelated to the establishment of a dedicated resolution mechanism for banks. The ECB recommends that the proceeds from this levy are clearly separated from the proceeds of the regular bank levy established for bank resolution purposes and that the dedicated extra-budgetary account used for collection of the regular bank levy¹⁴ is not used for other purposes.

3. Financing of the deposit guarantee scheme

As already noted by the ECB¹⁵, deposit protection is an important element of the financial safety net and therefore contributes to safeguarding financial stability. According to international standards, sound funding arrangements are critical to the effectiveness of deposit guarantee schemes and the maintenance of public confidence in the banking system¹⁶. In this respect, the ECB would like to make the following remarks.

First, the contributions to the deposit guarantee scheme are currently collected and managed by the Fund, which is a self-standing legal entity and which has the power to determine the amount of annual contributions paid by the member banks¹⁷. The draft law foresees that the amount of the annual contributions should in the future be determined either by the Fund or by Law No 118/1996 i.e. by the legislature. The proposed wording is ambiguous, as it is not clear which method takes precedence.

Second, while Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes¹⁸ does not prescribe a specified funding level for deposit guarantee schemes, it refers to the need to ensure that the financing capacities of the schemes are in proportion to the liabilities of their member credit institutions¹⁹. At the same time, the proposal for a recast of Directive 94/19/EC²⁰ introduces a rule under which credit institutions will be required to make annual contributions to deposit guarantee schemes with a view to achieving a pre-defined funding level²¹. The proposed suspension of the member bank contributions to the Fund is introduced by the draft law without having safeguarded that the Fund has achieved an adequate funding level and hence it contravenes the above principles. The ECB therefore recommends not introducing such a suspension of the contributions to the Fund.

14 Article 4(1) of Law No 384/2011.

15 Paragraph 8 of Opinion CON/2005/50 and paragraph 2.5 of Opinion CON/2007/26.

16 See 'Guidance for developing effective deposit insurance systems', Financial Stability Forum, September 2001, point V.4.

17 Article 6(2) of Law No 118/1996.

18 OJ L 135, 31.5.1994, p. 5.

19 Recital 23 of Directive 94/19/EC.

20 See the proposal for a directive .../.../EU of the European Parliament and of the Council on deposit guarantee schemes (recast), COM(2010) 368 final – COD 2010/0207 (hereinafter the 'proposed directive on deposit guarantee schemes').

21 Article 9(1) of the proposed directive on deposit guarantee schemes.

ECB-PUBLIC

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

Done at Frankfurt am Main, 16 July 2012.

[signed]

The President of the ECB

Mario DRAGHI