



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 21 January 2015

on the role of Národná banka Slovenska in the resolution in the financial market

(CON/2015/3)

Introduction and legal basis

On 29 October 2014, the European Central Bank (ECB) received a request from the Slovak Ministry of Finance for an opinion on a draft law on resolution in the financial market and on amendments to certain other 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 sixth indents of Article 2(1) of Council Decision 98/415/EC¹, as the draft law relates to a national central bank (NCB) and the rules applicable to financial institutions which 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 draft law is intended to transpose Directive 2014/59/EU of the European Parliament and the Council² (hereinafter the 'BRRD') into Slovak law. In this context, new responsibilities are to be assigned to Národná banka Slovenska (NBS).

The draft law establishes a resolution authority called the Resolution Council (hereinafter the 'Council'). In the matters which fall into its competence, the Council will be empowered to carry out supervision under Law No 747/2004 on supervision in the financial market and will be responsible for its conduct³. The Council will have legal capacity and will be composed of nine members. Four members will be appointed by the Governor of NBS, who will include a member of the NBS Board, the head of the new unit and two other NBS staff members holding managerial positions. The Minister for Finance will appoint four other members from among staff members of the Ministry of Finance (hereinafter the 'Ministry') holding managerial positions, one of whom will be the State Secretary of the Ministry. The Director of the Debt

¹ Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

² Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

³ Article I Section 5(7) of the draft law.

and Liquidity Management Agency will be the ninth member. A person directly deciding on the supervisory procedure may not be a member of the Council⁴.

A new organisational unit will be established within NBS (hereinafter the 'new unit') to provide expertise to, and organise the functioning of, the Council. The new unit will ensure that the tasks of the Council are carried out independently from other tasks of NBS. NBS staff from the new unit may not take part in the supervision of entities subject to the draft law unless the Council is competent in the matter.

All costs associated with the functioning of the Council will be borne by NBS⁵. Members of the Council will not be entitled to remuneration or reimbursement of expenses related to their function⁶. The ECB presumes that the expenses of the members appointed by the Governor will be borne by NBS.

The entities subject to the draft law will be obliged to pay annual *ex ante* contributions to the national resolution fund (hereinafter the 'resolution fund') administered by the Deposit Protection Fund (DPF). Monies belonging to the resolution fund will be held in an account with NBS, separate from other funds and assets of the DPF.

2. Role of NBS

- 2.1 Under the principle of financial independence, an NCB must have sufficient means not only to perform its tasks related to the European System of Central Banks (ESCB), but also its national tasks, e.g. financing its administration and own operations⁷. Financial independence also implies that an NCB should always be sufficiently capitalised⁸. Previous ECB opinions have pointed out that the allocation to the NCBs of specific non-ESCB related tasks needs to be accompanied by the allocation of adequate human and financial resources allowing such tasks to be carried out in a manner which will not affect the NCBs' operational capacity to carry out their ESCB-related tasks⁹. Additionally, in including NCB representatives in collegiate decision-making supervisory bodies or other authorities, due consideration would need to be given to safeguards for the personal independence of the members of the NCB's decision-making bodies. These comments are valid also in relation to the role of NBS under the draft law.
- 2.2 In addition, given that the separate organisational unit supporting the performance of the tasks of the Council is part of NBS, it is important to ensure that decisions adopted by the Council will not jeopardise the finances of the NBS as a whole. In this respect, the ECB notes that the Council will have legal personality and understands that the responsibility for carrying out its tasks will be borne by the Council¹⁰. It is advisable that this is clarified and stated explicitly in the draft law.¹¹

⁴ Section 5(2) of Law No 747/2004.

⁵ Explanatory memorandum to the draft law, Specific part, explanations to the Part two of Article I Sections 3 to 5.

⁶ Article I Section 4(4).

⁷ See the ECB's Convergence Report, June 2014, p. 25.

⁸ See the ECB's Convergence Report, June 2014, p. 25.

⁹ See for example paragraph 3 of Opinion CON/2007/8, paragraph 3.3 of Opinion CON/2011/7 and paragraph 9 of Opinion CON/2011/84.

¹⁰ Article I Section 5(4) of the draft law, in connection with Section 43(1) of Law No 747/2004.

¹¹ The ECB understands that this observation was reflected in Section 99(2) of the adopted version of the draft law.

2.3 Furthermore, the ECB underlines the importance of safeguarding compliance with the prohibition on monetary financing laid down in Article 123(1) of the Treaty. The new task entrusted to NBS under the draft law is neither an ESCB-related task, nor a traditional central banking task. Rather, the new task is linked to a task for government, i.e. resolution in the financial market. Therefore, if NBS is to be entrusted with such a task, it needs to be adequately remunerated in advance, to ensure compliance with the monetary financing prohibition¹².

3. Funding of the resolution fund

Pursuant to Article I Section 93(8) of the draft law, the Council may ask, inter alia, NBS to provide credit to the resolution fund. However, as resolution in the financial market is neither an ESCB-related task, nor a traditional central banking task, NBS would be assuming a Government task by financing the resolution fund. The BRRD provides that resolution costs should in principle be borne by shareholders and creditors and, where these funds are not sufficient, by financing arrangements. In line with the monetary financing prohibition, NCBs may not fund these financing arrangements¹³ and replenish the resolution fund by providing credit to it. Therefore, this provision of the draft law interferes with the monetary financing prohibition¹⁴ and should be deleted.

4. Relationship between the contributions to the resolution fund and the proceeds of the bank levy

4.1 The ECB has in the past opined on draft legislation introducing a bank levy in Slovakia, the proceeds of which are held in a separate extra-budgetary account and intended to cover costs related to the resolution of financial crises in the banking sector and to the protection of the stability of the banking sector in Slovakia¹⁵. The ECB understands that the obligation of the banks, as well as branches of foreign banks, to pay contributions to the resolution fund (hereinafter the 'contributions') will not affect their duty to continue paying the bank levy. The ECB supports the idea that the cost of resolution should be borne by the banking sector rather than the taxpayer. However, it is not clear what the relationship will be between the proceeds of the bank levy and the resolution fund for bank resolution purposes. The ECB recommends making clear in which part of the resolution financing process the income from the bank levy is to be employed and how it will interact with the resolution fund in order to avoid duplication of instruments.

5. Operational separation of NBS's resolution function from its supervisory and other tasks

5.1 Article 3(3) second subparagraph of Directive 2014/59/EU requires the staff involved in carrying out the functions of the resolution authority pursuant to this Directive to be structurally separated, and

¹² See the ECB's June 2014 Convergence Report, p. 29, as well as paragraph 2.1 of Opinion CON/2011/30 and paragraph 3 of Opinion CON/2013/29.

¹³ See paragraph 3.4 of Opinion CON/2012/99.

¹⁴ See the ECB's June 2014 Convergence Report, p. 28. See also paragraph 4 of Opinion CON/2011/103, paragraph 4.3 of Opinion CON/2011/93, paragraph 3.6 of Opinion CON/2011/39 and paragraph 3.2 of Opinion CON/2008/59.

¹⁵ Opinions CON/2011/66 and CON/2012/53.

subject to separate reporting lines, from the staff involved in carrying out the tasks pursuant to Regulation (EU) No 575/2013 of the European Parliament and of the Council¹⁶ and Directive 2013/36/EU of the European Parliament and of the Council¹⁷ or with regard to the other functions of the relevant authority.

- 5.2 The draft law aims at ensuring independence of the Council members from the institutions which they represent¹⁸. It also contains several provisions to ensure operational independence of the new unit¹⁹. Since the unit supporting the Council will be part of the structure of a different entity, namely NBS, the draft law should expressly state the reporting line of the new unit and should at the same time respect NBS' autonomy in staff matters, which is an aspect of the principle of financial independence of an NCB. In addition to the limited provisions on the competence of the Council vis-à-vis the staff of the new unit²⁰ contained in the draft law, it is advisable to distinguish clearly between the competences of the Council and NBS Board in respect of the staff of the new unit.
- 5.3 Finally, the ECB reiterates that the separation of the tasks of the new unit from the supervisory function of NBS should not prevent the staff of the new unit from having access to any necessary information which is available to the supervisory function²¹.

6. Membership of an NBS Board member in the Council

Pursuant to the draft law, one of the NBS representatives in the Council will be a member of the NBS Board²². At the same time, the draft law provides that the member of the Council who is the NBS Board member in charge of supervision in the financial market will not have voting rights²³.

The consulting authority should make it clear whether the NBS Board member appointed as a member of the Council is the one charged with supervision in the financial market, since this would have an impact on the voting rights of the member in question.

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

Done at Frankfurt am Main, 21 January 2015.

[signed]

The President of the ECB

Mario DRAGHI

¹⁶ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

¹⁷ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

¹⁸ Article I Section 4(1),(2) and (5), Section 5(3) and (4), Section 6(3).

¹⁹ Article I Section 3(2).

²⁰ The staff of the new unit will carry out supervision on behalf of the Council (Article I Section 5(4)). The Council will be competent to remove the obligation from the staff of the new unit to maintain confidentiality (Article I Section 8(2)).

²¹ See paragraph 3.3 of the Opinion CON/2014/62.

²² Article I Section 4(1).

²³ Article I Section 6(3).