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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

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

(CON/2007/43)

Introduction and legal basis

On 20 July 2007 the European Central Bank (ECB) received a request from the Slovak Ministry of Finance for an opinion on a draft law on the introduction of the euro in Slovakia and on amendments to certain laws. On 24 September 2007 the Slovak Ministry of Finance sent the ECB a revised version of this law (hereinafter the 'draft law') with an urgent request for an opinion.

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the first, second, third, fourth, fifth and sixth 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 provisions[1], as the draft law relates to currency matters, means of payment, Národná banka Slovenska (NBS), the collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payment statistics, payment and settlement systems and the 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 main objective of the draft law is to amend almost all relevant parts of the Slovak legal framework[2] for the introduction of the euro in Slovakia and to ensure the compatibility of Slovak legislation with the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'ESCB Statute'). The draft law contains three main parts: (i) the draft law on the introduction of the euro (hereinafter the 'draft euro law'); (ii) the draft law amending Law No 566/1992 Coll. on Národná banka Slovenska, as amended (hereinafter the 'draft amendments to the NBS Law');

1 OJ L 189, 3.7.1998, p. 42.

2 In line with the National Euro Changeover Plan for Slovakia adopted by the Resolution of the Slovak Government No 525 of 6 July 2005, as amended, there are three groups of legislative measures to be brought into line with Community law and this draft law contains the legislative measures from the first group and several legislative measures from the second group.

and (iii) amendments to 26 other laws[3] to prepare for the introduction of the euro in Slovakia[4].

2. General observations

2.1 The ECB welcomes the Slovak Government's initiative to start early preparations for the introduction of the euro, which should facilitate Slovakia's smooth changeover to the euro.

Direct applicability of Community regulations and provisions of primary Community law

2.2 Certain provisions of the draft law repeat relevant provisions of Community regulations. In this context, the ECB notes that Article 249 of the Treaty provides that a Community regulation 'shall be binding in its entirety and directly applicable in all Member States'. Therefore, a Community regulation, as stated by the Court of Justice of the European Communities, does not need to be transposed into the domestic law of a Member State[5]. The same applies to all directly applicable provisions of primary Community law. In this light, the ECB recommends deleting those articles of the draft law that repeat provisions and definitions of Community regulations and directly

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3 Law No 39/1993 Coll. on the Supreme Audit Office of Slovakia, as amended, Law No 513/1991 Coll., as amended (the Commercial Code), Law No 747/2004 Coll. on financial market supervision (including amendments to certain laws), as amended, Law No 566/2001 Coll. on securities and investment services (including amendments to certain laws), as amended, Law No 530/1990 Coll. on bonds, as amended, Law No 191/1950 Coll. on bills of exchange and cheques, Law No 594/2003 Coll. on collective investment (including amendments to certain laws), as amended, Law No 483/2001 Coll. on banks (including amendments to certain laws), as amended, Law No 310/1992 Coll. on home savings, as amended, Law No 118/1996 Coll. on deposit protection (including amendments to certain laws), as amended, Law No 510/2002 Coll. on the payment system (including amendments to certain laws), as amended, Law No 202/1995 Coll. (foreign exchange), as amended, Law No 43/2004 Coll. on retirement pension saving (including amendments to certain laws), as amended, Law No 650/2004 Coll. on supplementary pension saving (including amendments to certain laws), as amended, Law No 461/2003 Coll. on social insurance, as amended, Law No 462/2003 Coll. on compensation of earnings during an employee's temporary incapacity (including amendments to certain laws), as amended, Law No 171/2005 Coll. on gambling games (including amendments to certain laws), as amended, Law No 530/2003 Coll. on the Commercial Register (including amendments to certain laws), as amended, Law No 18/1996 Coll. on prices, as amended, Law No 258/2001 Coll. on consumer loans and on the amendment to Law No 71/1986 Coll. on the Slovak Trade Inspectorate, as amended, Law No 63/1993 Coll. on state symbols of Slovakia and on their use, as amended, Law No 231/1999 Coll. on state aid as amended, Law No 82/1994 Coll. on state material reserves, as amended, Law No 80/1997 Coll. on the Export-Import Bank of Slovakia, as amended, Law No 507/2001 Coll. on postal services, as amended, Law No 291/2002 Coll. on the State Treasury (including amendments to certain laws), as amended.

4 For ease of reference, with regard to Sections I and II of the draft law, the Article numbers in the text refer to the numbering in the underlying legal act (e.g. the draft amendments to the NBS Law). With regard to Sections III to XXX of the draft law, the Article numbers refer to the underlying law covered by each section and there are also footnote references to the corresponding Section and Point in the draft law.

5 As stated by the Court of Justice of the European Communities in Case 34/73 *Fratelli Variola S.p.A* v *Amministrazione italiana delle Finanze* [1973] ECR 981: 'by virtue of the obligations arising from the Treaty and assumed on ratification, Member States are under a duty not to obstruct the direct applicability inherent in regulations and other rules of Community law. Strict compliance with this obligation is an indispensable condition of simultaneous and uniform application of Community regulations throughout the Community'. This position was reiterated in Case 50/76 *Amsterdam Bulb* v *Produktschap voor Siergewassen* [1977] ECR 137. See also ECB Opinion CON/2006/10 of 23 February 2006 at the request of the Central Bank of Malta on a draft law on the adoption of the euro; ECB Opinion CON/2006/29 of 12 June 2006 at the request of the Slovenian Ministry of Finance on a draft law on the introduction of the euro; and ECB Opinion CON/2007/1 of 15 January 2007 at the request of the Cypriot Ministry of Finance on a draft law regulating the adoption of the euro and the currency changeover.

applicable provisions of primary Community law[6], including definitions. The draft law should therefore include only those issues relating to the introduction of the euro in Slovakia[7] that are not regulated by Community legislation. This would also contribute to simplifying the draft law.

3. Specific observations concerning the draft euro law (Section I of the draft law)

Changeover rules

Article 3(8)(b)(1) of the draft euro law provides that banks will be required to exchange Slovak currency banknotes into euro for a period of one year from the day the euro is introduced. This one year period applicable to banks goes beyond, but is not inconsistent with what is foreseen in Community law[8].

4. Specific observations concerning the draft amendments to the NBS Law (Section II of the draft law)

NBS's integration into the Eurosystem

4.1 The draft law addresses a number of issues that the ECB raised in its Convergence Report of December 2006[9]. The ECB welcomes the Slovak Government's efforts to achieve the required level of legal convergence and notes that the legal convergence of the amended NBS Law will be also assessed in the ECB's next Convergence Report.

4.2 Concerning the system of sanctions provided for by Community law, the compatibility of the amendments introduced by the draft law to the NBS Law with such system is important for the legal integration of NBS into the Eurosystem. Under Article 21 of the draft amendments to the NBS Law, NBS may impose and enforce sanctions relating to minimum reserves or to other monetary policy operations, in accordance with the rules applicable to the Eurosystem[10]. The ECB assumes that the term 'other monetary policy operations' in Article 21 of the draft amendments to the NBS Law includes 'credit operations' within the meaning of the ESCB Statute.

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6 If, in spite of what has been explained, the Slovak authorities still intend to reproduce such primary and secondary Community law provisions, they should reproduce them precisely without modifying their wording. See Article 1(2)(a) of the draft euro law which does not reproduce precisely the provisions of the relevant monetary agreements referred to in footnote 3 of the draft euro law. Furthermore, Article 24b of the draft law amending Law No 39/1993 Coll. on the Slovak Supreme Audit Office (Section III), as amended, and Article 38(2) of the draft amendments to the NBS Law do not reproduce precisely the provisions of Article 27 of the ESCB Statute.

7 See, e.g. supervision of compliance with rules and obligations concerning the changeover from the Slovak currency to the euro governed by Articles 19 to 22 of the draft euro law or withdrawal of euro coins governed by Article 17c of the draft amendments to the NBS Law.

8 See Articles 15 and 16 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro (OJ L 139, 11.5.1998, p. 1). Regulation as last amended by Regulation (EC) No 835/2007 (OJ L 186, 18.7.2007, p. 1)

9 See the ECB's Convergence Report of December 2006, pp. 21-33 and 230-231.

10 See, e.g. Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application of minimum reserves by the European Central Bank (OJ L 318, 27.11.1998, p.1). Regulation as last amended by Council Regulation (EC) No 134/2002 (OJ L 24, 26.1.2002, p. 1), Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions (OJ L 318, 27.11.1998, p. 4); and Regulation ECB/2003/9 of 12 September 2003 on the application of minimum reserves (OJ L 250, 2.10.2003, p. 10).

4.3 Article 5 of Decision ECB/2003/4 of 20 March 2003 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes[11] provides that the Governing Council is to decide on the 'treatment of euro banknotes presented once the withdrawal period is over and/or they have lost their legal tender status'. In order to reflect this provision in the draft law, the ECB recommends adding the wording 'subject to the rules applicable in the euro area' at the end of Article 17a(4) of the draft amendments to the NBS Law and including a reference to Decision ECB/2003/4 in a footnote.

4.4 The ECB understands that Article 17f(2) of the draft amendments to the NBS Law encompasses provisions of the Banknote Recycling Framework[12], even though footnote 3h) (listing examples of rules applicable in the euro area) makes no explicit reference to this Framework. In addition, the same approach used in Article 17f(2) should be used in Article 17f(5) of the draft amendments to the NBS Law; in particular, the wording 'provided in a separate legal provision' at the end of the first sentence of Article 17f(5) should be replaced by 'provided in the rules applicable in the euro area to the processing of euro banknotes and euro coins', together with a corresponding reference in footnote 3h).

4.5 Article 17a(1) of the draft amendments to the NBS Law introduces a general provision on legal tender, which is to remain in force after the introduction of euro banknotes and coins in Slovakia following the abrogation of the derogation by the EU Council. Article 17a(3) of the draft amendments to the NBS Law introduces a specific provision on the status as legal tender of euro banknotes and coins, and in this connection the ECB makes the following technical recommendations.

The ECB understands that Article 17a(3) of the draft amendments to the NBS Law is intended to designate the entities which will be obliged, under the third sentence of Article 11 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro[13], to accept cash payments in euro coins irrespective of the number of coins involved. The purpose of the third sentence of Article 11 of Regulation (EC) No 974/98 is to provide for the obligation of the issuing authority to accept unlimited amounts of euro coins and to allow national law to extend this obligation to other entities. The ECB questions the extensive scope of the entities designated under national law to accept euro coins without restrictions[14].

Parties who are not designated in Article 17a(3) of the draft amendments to the NBS Law, are entitled to reject payments involving more than 50 euro coins by virtue of the direct application of Article 11 of Regulation (EC) No 974/98. Article 17a(3) of the draft amendments to the NBS Law

11 OJ L 78, 25.3.2003, p. 16.

12 See the ECB document 'Recycling of euro banknotes: framework for the detection of counterfeits and fitness sorting by credit institutions and other professional cash handlers' (SEC/GovC/04/23/09a.rev-2) that has been agreed by the ECB's Governing Council on 16 December 2004 and is available on the ECB's website at www.ecb.int.

13 OJ L 139, 11.5.1998, p. 1

14 The ECB notes that the scope of application of the first sentence of Article 17a(3) in relation to coins is in fact limited by virtue of the direct application of Article 11 of the Regulation (EC) No 974/98. The reference to this Article in footnote 3d) of the draft amendments to the NBS Law reflects this intended limitation.

also entitles all legal and natural persons other than NBS and banks, to reject payments involving Slovak euro collector coins[15]. In this respect the ECB notes that, in accordance with the Council Conclusions of 23 November 1998 on euro collector coins, these coins will only be legal tender in the country of issue, if necessary through the operation of national law. The Council Conclusions should be fully taken into account[16] when providing for any limitation to the status as legal tender of collector coins such as that provided for in Article 17a(3) of the draft amendments to the NBS Law.

Finally, Article 17a(3) of the draft amendments to the NBS Law is justified to the extent that its scope is limited to euro coins in accordance with Article 11 of Regulation (EC) No 974/98, or to the need to deal with the status as legal tender of euro collector coins. However, the references in Article 17a(3) of the draft amendments to the NBS Law to the status as legal tender of euro banknotes are unnecessary in view of the direct applicability of Article 10 of Regulation (EC) No 974/98[17].

5. Specific observations concerning the draft amendments (Sections III to XXVIII of the draft law)

Denomination of amounts in legal instruments

5.1 The currency of a Member State with a derogation is its national currency until the entry into force of the Council decision abrogating the derogation under Article 122(2) of the Treaty. In accordance with this principle, the entry into force of national law provisions introducing amounts in euro that replace the national currency should not take place prior to the entry into force of the eventual Council decision abrogating the Member State's derogation[18]. Such entry into force of national law provisions containing amounts in euro, other than when the euro is used in the context of the euro as a foreign currency[19], is possible only where it is necessary due to the transposition of Community law provisions[20] expressed in euro[21]. In such latter case, national law could refer to 'an

15 Article 17a(3) of the draft amendments to the NBS Law does not distinguish between Slovak euro collector coins and euro collector coins issued by other Member States. However, since euro collector coins are only legal tender in the issuing Member State, in accordance with the Council Conclusions of 23 November 1998 on euro collector coins, the ECB understands that this Article only refers to Slovak euro collector coins.

16 The second sentence of Article 17a(3) of the draft amendments to the NBS Law would have to provide a clear reference to Article 11 of the Regulation (EC) No 974/98.

17 See paragraph 2.2. of this opinion. If the Slovak authorities still intend to refer to euro banknotes in Article 17a(3) of the draft amendments to the NBS Law, a clear reference should be made to Article 10 of Regulation (EC) No 974/98 in the first sentence of Article 17a(3) of the draft amendments to the NBS Law.

18 Article 123(5) of the Treaty provides that if the Council decides to abrogate the derogation, it 'shall … adopt the rate at which the euro shall be substituted for the currency of the Member State concerned'. See also paragraphs 3.2 and 3.3 of ECB Opinion CON/2006/28 of 9 June 2006 at the request of Estonian Ministry of Justice on a draft law amending the Commercial Code and some other legislation to facilitate euro introduction.

19 This use of the euro in the context of the euro as a foreign currency in national law provisions occurs, for instance, when the provisions refer to expenses incurred in a euro area Member State or to loans denominated in euro.

20 See, e.g. Article 4 of Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ L 84, 26.3.1997, p. 22) and Article 9(2)(b) of the Law No 118/96 Coll. (Section XII, Point 5 of the draft law) transposing this Directive.

amount in the national currency equivalent to "X" euro' (including a formula to be used for the calculation of such amounts) until the eventual Council decision that will abrogate the Member State's derogation enters into force. The draft law amends Law No 18/1996 Coll.[22] as follows: (i) thresholds expressed in the Slovak currency will be replaced by thresholds expressed euro in Article 18(1)(b) and 18(2); and (ii) a new Article 23c specifies that the euro foreign exchange reference rate set and published by NBS will be used to calculate in the Slovak currency the actual amounts resulting from the said thresholds expressed in euro in Articles 18(1)(b) and 18(2) for the period between 1 January 2008 (the date the draft law enters into force) and the date the euro is introduced in Slovakia.

Law No 510/2002 Coll. on the payment system (Section XIII)

5.2 The existing Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET) will be replaced by TARGET2 starting from 19 November 2007. Each NCB that is a member of the Eurosystem is obliged to migrate to TARGET2 and to bring its respective national legislative provisions into line with the TARGET2 Guideline[23]. Even though this obligation does not yet apply to NBS, Law No 510/2002 Coll. will need to be amended before NBS becomes a member of the Eurosystem.

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

Done at Frankfurt am Main, 19 December 2007.

[signed]

The President of the ECB

Jean-Claude TRICHET

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21 The national law would have to provide that upon the introduction of the euro such provisions should be read as referring to the given amount in euro and not to its equivalent. The ECB notes that a legal technique along these lines is already applied in this draft law (see, e.g. the Law No 258/2001 Coll. in Section XXII of the draft law).

22 See Section XXI, Point 1 and Point 2 in conjunction with Point 4 of the draft law.

23 See Guideline ECB/2007/2 of 26 April 2007 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2), (OJ L 237, 8.9.2007, p. 1).