EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 5 December 2011

on fiscal responsibility

(CON/2011/96)

Introduction and legal basis

On 11 November 2011, the European Central Bank (ECB) received a request from the Committee of the National Council of the Slovak Republic on Finance and the Budget for an opinion on a draft constitutional law on fiscal responsibility (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 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 provisions[1], as the draft law relates to Národná banka Slovenska (NBS). 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 establishes rules of fiscal responsibility and fiscal transparency and the Fiscal Responsibility Board[2].

The Fiscal Responsibility Board (hereinafter 'the Board') will be an independent body monitoring and evaluating the development of the Slovak economy and evaluating compliance with fiscal responsibility rules[3]. It will comprise a chair and two other members elected by the Slovak Parliament. NBS' Governor will propose a candidate for one of the members[4]. Membership of the Board will be incompatible with membership of NBS' Bank Board[5]. NBS will finance and set a limit on expenditure for the Office of the Board (hereinafter 'the Office')[6]. To the extent of its competence, the Board will cooperate with NBS and provide data to NBS[7].

1 OJ L 189, 3.7.1998, p. 42.

2 Article 1 of the draft law.

3 Article 3(1) of the draft law.

4 Article 3(2) of the draft law. Pursuant to Article 10(3), at the first election, the candidate will be proposed by at least one fifth of all deputies.

5 Article 3(4) of the draft law.

6 Article 3(8) of the draft law.

7 Article 4(2) of the draft law.

The draft law initially sets the government debt (hereinafter the 'debt') threshold at 60% of GDP and establishes procedures for reducing the debt that will apply to debt of at least 50% of GDP; starting in 2018 the thresholds will be reduced by 1 percentage point annually, until reaching final levels of 50% and 40% of GDP respectively in 2028.

2. Funding the Board and the Office

The Office will have legal capacity and will perform professional, organisational, administrative, human resources and technical tasks for the Board. It will be managed by an Executive Director and have its own staff acting as budget analysts[8]. The Board will decide on the structure of the budget of both the Board and the Office. Whereas NBS will finance and set a limit on the Office's expenditure, the explanatory memorandum to Article 3 of the draft law also states that NBS will finance the Board.

The ECB notes that it is important to safeguard compliance with the monetary financing prohibition pursuant to Article 123 of the Treaty. The prohibition is essentially designed to prevent central banks from providing overdraft facilities or any other type of credit facility to the public sector[9]. National legislation may not therefore require that a national central bank finance the performance of functions of other public sector bodies[10]. The Board and Office are independent of the NBS and the task assigned to them is neither a central banking task, nor does it facilitate the performance of such task. In this context, the Office's tasks are to be fulfilled and financed from the Government's budget. On this point, the financing of the Office's and the Board's expenditure by NBS breaches the prohibition on monetary financing.

3. Fiscal rules

The proposed fiscal rule provides for a debt threshold and escalating measures to tighten fiscal policy as it is approached or exceeded. No limits are imposed on fiscal policy when debt remains at least 10% of GDP below the threshold. If debt exceeds various levels, increasingly strong measures are required, such as justifications, expenditure limits and a vote of confidence when the threshold is breached. Escape clauses cover severe recessions, financial crises, natural catastrophes and war. Interim provisions clarify that the initial debt threshold is set at 60% of GDP, and will be reduced by 1 percentage point per year starting in 2018 and reaching a final limit of 50% of GDP in 2028.

The ECB considers that the proposed fiscal rule set out in the draft law does not fulfil all the fiscal requirements, as it does not include a deficit limit, provisions to allow for the economic cycle and references to Union legislation. The rule should limit general government deficits in addition to debt in order to bind fiscal policies even when debt is relatively low. A deficit limit is also required under the Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the

8 Explanatory memorandum to Article 3.

9 The precise scope of application of the monetary financing prohibition is further clarified by Council Regulation (EC) No 3603/93.

10 Convergence report, May 2010, p. 25.

Member States[11], as well as in the Euro summit statement of 26 October 2011[12]. The fiscal rule should, moreover, make provisions for the economic cycle that go beyond the current escape clause applicable only in the severest circumstances. The fiscal rule should also refer to Union legislation to take into account possible changes of Union limits on deficit or debt in the future.

The abovementioned rules in Directive 2011/85/EU should preferably be reflected in the draft law, as the Euro summit statement of 26 October 2011 recommends their adoption at constitutional level. The ECB notes that the Slovak legislator addresses only the matters of highest importance in such constitutional laws and that, in any event, the rules should be duly reflected in Slovak legislation.

4. Fiscal transparency

The provisions on transparency do not cover all the requirements under Directive 2011/85/EU, such as the obligation to publish monthly cash-based data, the obligation to compare the own macro-fiscal scenario with the European Commission forecast and the need for regular published *ex post* evaluations of projections. Moreover, fiscal transparency would be enhanced by giving the task of fiscal projections to the Fiscal Responsibility Board, rather than to a committee under the Ministry of Finance.

5. Definition of government debt

The ECB understands that the term 'government debt' ('*dlh verejnej správy*') in the draft law has the same meaning as in Article 1(5) of Council Regulation (EC) No 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community[13]. For the purpose of clarity, however, the ECB suggests inserting the definition of government debt in the list of definitions and clarifying the valuation and consolidation of government debt and financial instruments covered. Further, the level of debt mentioned in Article 5(2) should additionally refer to the abovementioned Protocol and to Regulation (EC) No 479/2009.

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

Done at Frankfurt am Main, 5 December 2011.

[signed]

The President of the ECB

Mario DRAGHI

11 OJ L 306, 23.11.2011, p. 41.

12 Available on the Council of the European Union's website at www.consilium.europa.eu.

13 OJ L 145, 10.6.2009, p. 1.