EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 27 October 2009

on Národná banka Slovenska's independence

(CON/2009/85)

Introduction and legal basis

On 20 October 2009 the European Central Bank (ECB) received a request from the National Council of the Slovak Republic for an opinion on draft amendments to Section VI of the draft law on payment services and on amendments to certain laws (hereinafter the 'draft law'). Section VI of the draft law contains draft amendments to the Law on Národná banka Slovenska (NBS).

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community 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 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

1.1 The draft law introduces a provision on a possible transfer of NBS' profit to the State budget or State financial assets. According to the draft provision, the Board may decide on a transfer of the profit balance or any part thereof to the State budget or State financial assets.

1.2 The draft law also provides for changes in the composition of the Board and the reappointment of its members. The number of Board members will be reduced from 11 to five, with this reduction concerning only Board members appointed by the Government. The number of Board members will be reduced gradually, as all current Board members will remain until the end of their term of office. The draft law will allow members of the Board to be reappointed without any limitation except the Governor and the Vice-Governor; under the current law, reappointment was limited to two consecutive terms of office.

1.3 The draft law also introduces a provision aiming to provide for continuity in the Governor's office, with the Governor's function and the term of office not ceasing before the effective date of the appointment of a new NBS Governor.

1 OJ L 189, 3.7.1998, p. 42.

2. General observations

2.1 The statutes of national central banks (NCBs) and any amendments thereto must safeguard the independence of NCBs, thus ensuring the proper performance of their tasks under the Treaty and the Statute of the European System of Central Banks (hereinafter the 'Statute of the ESCB'). The draft law contains amendments to the Law on Národná banka Slovenska (NBS) that concern personal and financial independence of the central bank.

2.2 With regard to personal independence, the amendments should safeguard the security of tenure and the minimum term of office of the Governor and of the other members of decision-making bodies involved in the performance of ESCB-related tasks. Article 14.2 of the Statute of the ESCB provides that the NCB statutes must provide for a minimum term of office of five years for the Governor; it also protects against the arbitrary dismissal of Governors, by providing that Governors may only be relieved from office if they no longer fulfil the conditions required for the performance of their duties or if they have been guilty of serious misconduct.

2.3 One of the features of financial independence that is most vulnerable to outside influence is the distribution of profits and the creation of financial provisions. With regard to profit allocation rules, an NCB's statute may prescribe how profits are to be allocated. Moreover, even though amendments to such rules are possible, it is important to shield the rules related to the distribution of profits from third-party interests and to ensure a legal framework that provides a stable and long-term basis for the central bank's functioning[2]. Furthermore, any decision by NCB decision-making bodies on allocation of profits should be taken on professional grounds and should not be subject to the discretion of third parties unless there is an express safeguard clause stating that this is without prejudice to the financial means necessary for carrying out the ESCB or Eurosystem-related tasks[3].

2.4 With regard to financial provisions and buffers, as stressed by the ECB in its convergence reports, an NCB must be free to independently create financial provisions to safeguard the real value of its capital and assets.

3. Personal independence

The new wording of Article 7(8)(a) and Article 7(8)(b) provides that the office of the Governor may cease only when a new Governor has been appointed. The ECB understands that this new provision is intended to fill the gap between expiry of the Governor's five year term office or resignation from office, and appointment of a new governor subject to Article 7(4) of the Law on NBS. The wording of this provision might lead to a different interpretation, whereby the office of the Governor will cease when a new governor is appointed, whenever this will happen, i.e. even before expiry of the five year term of office, or before resignation. In order to avoid any possible misinterpretation that could lead to breach of Article 14.2 of the Statute of ESCB, rewording of this provision should be considered.

2 See ECB Opinion CON/2007/14. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

3 See the ECB's Convergence Report May 2008, p. 21.

4. Financial independence

4.1 Each Member State is obliged to safeguard their NCB's financial independence, thus ensuring the proper performance of its tasks under the Treaty and the Statute of the ESCB[4]. In particular, the compatibility of the Law on NBS with the central bank independence requirements of Article 108 of the Treaty and the Statute of the ESCB is of utmost importance, as NBS' primary objective of price stability is best served if it is a fully independent institution with a precisely defined mandate[5].

4.2 The ECB welcomes the new wording of Article 39(4) of the Law on NBS which stipulates that the profit balance of the NBS or any part thereof may be transferred to the State budget or to the State financial assets subject to a decision only by NBS' Board and in accordance with the Law on the budgetary rules for public administration.

4.3 NCBs must have sufficient financial means to carry out their other functions at all times, i.e. they must be able to perform their national tasks, to meet their international obligations and to cover their administrative and operational expenses[6]. The ECB understands that the new third sentence of Article 39(4) of the Law on NBS must be read in conjunction with the second sentence thereof, i.e. any NBS profit is first allocated to the reserve fund and other funds created from profit and is intended to cover an accumulated loss from previous years. In this context, it is understood that only once the accumulated losses from previous years have been covered may any profit balance be transferred to the State budget or to the State financial assets, following a decision by the Board. This mechanism is crucial to ensure NBS' financial independence without weakening its financial means for implementing its monetary policy[7]. The draft law should be reworded regarding paragraph 39(4) of the Law on NBS in this respect.

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

Done at Frankfurt am Main, 27 October 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET

4 Opinion CON/2009/53, paragraph 2.1.

5 Opinion CON/2009/26, paragraph 2.1.

6 Opinion CON/2009/26, paragraph 2.3; and Opinion CON/2009/53, paragraph 2.2.

7 Opinion CON/2009/53, paragraph 3.2.