EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 23 August 2011

on a special levy on financial institutions operating in Slovakia

(CON/2011/66)

Introduction and legal basis

On 25 July 2011 the European Central Bank (ECB) received a request from the Slovak Ministry of Finance for an opinion on the draft law on a special levy on selected financial institutions, on an amendment to Law No 479/2009 Coll. on state administration authorities in the field of taxes and charges 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 provisions[1], 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 draft law imposes an obligation on banks and branches of foreign banks (hereinafter jointly the 'banks') to pay a special levy, the proceeds of which are to be held in a separate extra-budgetary account intended to cover costs related to the resolution of financial crises in the banking sector and to protect the stability of the banking sector in Slovakia[2]. The rate of the levy for the respective calendar year will be 0.2% of the amount of liabilities of the bank reported in the balance sheet[3], with certain deductions including: (a) the amount of the bank's equity, provided that its value is positive; (b) the value of financial resources provided to the branch of a foreign bank on a long term basis; (c) the value of subordinated debt; (d) the value of deposits received by the bank within the territory of the Slovak Republic and protected according to a special regulation[4]; (e) the value of deposits received by the bank within the

1 OJ L 189, 3.7.1998, p. 42.

2 See Article 4(1) to (3) of the draft law.

3 The ECB understands that these liabilities are non-consolidated, i.e. are on an individual basis.

4 Law No 118/1996 Coll. on the protection of bank deposits and amending certain other laws, as amended.

territory of Slovak Republic and protected in other Member State of the European Economic Area[5]. Levies shall be administered by the Tax Office for Selected Tax Entities[6].

2. Collection of the bank levy

2.1 As noted in the general part of the explanatory memorandum to the draft law[7], the imposition of the bank levy introduces the risk of 'double charging' which may arise when Member States introduce bank levies on subsidiaries of their own financial institutions resident in other Member States or on foreign branches of Union banks resident in their own territory. There is therefore a risk that the draft law may result in double charging, in particular through the imposition of a levy on branches of foreign banks[8]. In this context, the ECB notes that the European Council has called for 'further coordination between different levy schemes in order to avoid double-charging'[9].

2.2 The ECB supports the development of a harmonised approach to bank levies, which should be aligned with the developing Union framework for bank recovery and resolution[10] and is complementary to existing regulation. The development of this harmonised approach would achieve the overall objective of preserving the level-playing field, whilst limiting distortions to competition, and ensuring that financial stability is equally safeguarded. This is particularly important in the Union where the introduction of different bank levy schemes could potentially undermine the process of financial integration by introducing elements of fiscal, regulatory and supervisory fragmentation. Hence, the ECB invites the Slovak authorities to amend the draft law to introduce an approach which is flexible enough to adapt to the ongoing changes in Union regulation and supports the medium-term Union harmonised solution, e.g. through the built-in flexibility of a 'rendez-vous clause'.

2.3 To enhance coordination between the relevant home and host authorities in these matters, the ECB highlights the need for the Slovak authorities to inform, where possible, in advance, the supervisory and fiscal authorities of the countries concerned, regarding the plan to introduce a levy system that will impose charges on foreign branches in Slovakia.

2.4 Moreover, in accordance with its recent opinion[11], the ECB invites the Slovak authorities to consider introducing rules for replenishing the funds collected through the levy where part or all of such funds are subsequently used to finance resolution measures.

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5 See Article 2(a) of the draft law.

6 See Article 2(b) of the draft law.

7 See p. 1 of the general part of the explanatory memorandum to the draft law.

8 See Article 1(a) of the draft law.

9 See conclusion of the European Council of 28-29 October 2010, available at the Council website at www.consilium.europa.eu.

10 See the work on Union legislation aimed at harmonising bank recovery and resolution rules initiated by the European Commission and in particular, the DG Internal Market and Services working document: technical details of a possible EU framework for bank recovery and resolution of 6 January 2011, available on the Commission's website at http://ec.europa.eu.

11 See paragraph 3.6 of Opinion CON/2011/29. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

3. Administration and use of the resolution fund

3.1 As noted in the general part of the explanatory memorandum to the draft law[12], the levy is expected to contribute to creating a dedicated resolution mechanism for banks. To this effect, the draft law specifies that proceeds of the levy are to be held in a separate extra-budgetary account intended to cover costs related to the resolution of financial crises in the banking sector and to protect financial stability[13]. The ECB understands that the proposed levy is to be collected by the general taxation authorities[14] and will be governed by the general rules of tax administration[15]. Moreover, the draft law does not address any further specific provisions as to the conditions under which the levy proceeds are to be applied to finance bank resolution measures.

3.2 The ECB makes the following specific observations regarding the administration and use of the resolution fund, which is created on the basis of the levy proceeds.

3.2.1 The ECB recommends that, as a minimum, a clearer separation is introduced between the extra-budgetary account created out of the levy proceeds, and the general budgetary resources[16]. Potential use of the levy's proceeds to reduce public deficit and failure to establish, in the long term, dedicated resolution funds may result in an increasing dependence of the financial sector on public funds, particularly where crisis conditions may reoccur, which would strengthen the moral hazard concerns.

3.2.2 In line with its recent opinion[17], the ECB recommends that detailed rules on the application of the resolution fund to finance the bank resolution measures are set out in the draft law or in another adequate legal instrument. Such rules should, in particular, help to limit moral hazard in connection with the application of the resolution fund. A primary purpose of resolution funds should be to mitigate the effects of a bank failure for the different stakeholders, including customers, the real economy and taxpayers. In particular, this implies that resolution funds should not be used for any form of bailout or to avoid a bank's insolvency. Therefore, stringent conditions for their use need to be defined, including no automatic relationship between fund contributions and pay-out, and decisions about the use of the funds should reside with independent and accountable public authorities. The ECB made further recommendations in this respect in a recent opinion[18], to which

12 See page 1 of the general part of the explanatory memorandum.

13 See Article 4(3) of the draft law.

14 See Article 2(b) of the draft law.

15 See Article 5 of the draft law, referring in the footnotes to the Law No 563/2009 Coll. on the administration of taxes and amending certain other laws.

16 According to the draft law, the use of state financial assets consisting of collected levies will be governed by Law No 523/2004 Coll. on budgetary rules of the public administration and amending certain other laws.

17 See paragraph 3.2 of Opinion CON/2011/29.

18 See paragraph 3.4 of Opinion CON/2011/29.

it draws the attention of the Slovak authorities, whilst at the same time inviting them to monitor the harmonised solutions which are being developed in this respect at Union level[19].

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

Done at Frankfurt am Main, 23 August 2011.

[signed]

The President of the ECB

Jean-Claude TRICHET

19 See the work on Union legislation aimed at harmonising bank recovery and resolution rules initiated by the Commission and in particular, the DG Internal Market and Services working document: technical details of a possible EU framework for bank recovery and resolution of 6 January 2011, available on the Commission's website at http://ec.europa.eu.