EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 2 April 2013

on special mortgage transactions

(CON/2013/23)

Introduction and legal basis

On 1 March 2013, the European Central Bank (ECB) received a request from the Slovak Ministry of Finance for an opinion on a draft law amending Law No 483/2001 on banks (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 purpose of the draft law is, *inter alia*, to curtail foreign banks' entitlement to carry out special mortgage transactions covered by the banking licence through their branches in Slovakia[2]. Special mortgage transactions comprise: (a) the provision of mortgage loans and the related issuance of mortgage bonds; or (b) the provision of municipal loans and the related issuance of municipal loans[3]. The proposed amendment aims at protecting consumers and other clients, since Národná banka Slovenska has limited supervisory powers over branches of foreign banks as compared to banks. In the event that the draft law were adopted, only banks could carry out special mortgage transactions in Slovakia. However, branches of foreign banks would continue to be entitled to provide common mortgage loans[4]. The draft law also contains a transitional provision covering situations where a bank which has performed special mortgage transactions ceases to exist and its legal successor is a foreign bank[5]. Furthermore, the draft law also provides that a bank has a duty to notify its clients of its intention to terminate its activity[6].

1 OJ L 189, 3.7.1998, p. 42.

2 Article I (3), (6), (7), (8) and (61) of the draft law.

3 Article 67(1) of Law No 483/2001 on banks. Pursuant to Article 2(1), a bank is defined as a legal entity with its registered office in the territory of the Slovak Republic, founded as a joint-stock company, which (a) accepts deposits, and (b) provides loans; and which holds a banking licence to perform activities noted in paragraph 1.

4 See the specific part of the explanatory memorandum to the draft law, explanations to Article I (3), (6), (7) and (8).

5 Article I (11) of the draft law.

6 Article I (16) of the draft law.

2. Freedom of establishment

The consulting authority should ensure that the draft law does not restrict the freedom of establishment of Union credit institutions[7] in Slovakia as exercised through the setting up of branches and, in particular, the conduct of activities subject to the principle of mutual recognition[8].

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

Done at Frankfurt am Main, 2 April 2013.

[signed]

The President of the ECB

Mario DRAGHI

7 Title IV, Chapter II, Articles 49-55 of the Treaty on the Functioning of the European Union.

8 See Article 23 in conjunction with Annex I to Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (OJ L 177, 30.6.2006, p. 1).