



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 19 September 2016

on the role of Národná banka Slovenska in reporting on insurance premium levy

(CON/2016/45)

Introduction and legal basis

On 16 August 2016 the European Central Bank (ECB) received a request from the Ministry of Finance of the Slovak Republic (hereinafter the 'Ministry of Finance') for an opinion on a draft law amending Law No 39/2015 on insurance and on amendments of 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 third indent of Article 2(1) of Council Decision 98/415/EC¹, 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

- 1.1 Under the current legal framework, insurance undertakings established in Slovakia and other Member States and branches of third-country insurance undertakings (hereinafter jointly referred to as 'insurance undertakings') are required to make annual partial premium transfers in the amount of 8% of the premiums received from compulsory motor vehicle liability insurance in respect of activities carried out in the Slovak Republic in the previous year. The transfers must be made to a separate account of the Ministry of Interior of the Slovak Republic (hereinafter the 'Ministry of Interior'). The insurance undertakings must report the partial premium transfers to NBS, the Ministry of Finance and the Ministry of Interior within three working days of the date of transfer. In addition, the insurance undertakings are required to provide NBS with data that supports the items used in the calculation of the base for the annual premium transfers. The funds collected from the premium transfers are allocated by the Ministry of Interior, after having consulted the Ministry of Finance, to cover certain pre-defined expenses, such as those of fire brigades and relevant units of the Ministry of Interior in relation to traffic and accidents.
- 1.2 The draft law extends the mandatory premium transfers to all classes of non-life insurance products and provides for the premium transfers to take place on a quarterly basis. Consequently, the insurance undertakings will have to report quarterly to the relevant Ministries and NBS and also provide to NBS on a quarterly basis the data that supports the items used in the calculation of the

¹ Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

base for the premium transfers. Under the draft law, the additional financial resources will be transferred to the Ministries of Health, Environment and Finance, which will use the funds for a set of pre-defined purposes, in particular for a renewal and modernisation of the healthcare infrastructure, implementation of flood management measures, and to cover unforeseen expenditures of the central government.

2. General observations

- 2.1 The draft law imposes on the insurance undertakings a new substantial quarterly reporting requirement vis-à-vis NBS, which will considerably increase the amount of data to be reported to and processed by NBS. As a result, the draft law significantly expands the substance of the task currently performed by NBS.
- 2.2 The ECB underlines that, in the context of a proposed conferral of tasks on a European System of Central Banks (ESCB) member, it is necessary to assess such conferral against the prohibition of monetary financing under Article 123 of the Treaty. The ECB has developed the following guidance, in the form of general and specific considerations, on the basis of which the ECB may decide whether a new task conferred on an ESCB national central bank (NCB) is to be considered a central banking task or a government task for the purposes of the monetary financing prohibition.

2.2.1 General considerations

First, the systematic categorisation of tasks assigned to NCBs as central banking or government tasks applies to genuinely new tasks that did not exist in the past or did not form an integral part of the central banking tasks already assigned to the NCB. In recognition of the different Member States' legal frameworks, central banking traditions and national set-ups, the tasks currently discharged by an NCB as central banking tasks are not reviewed and re-categorised, but may be reassessed if they are subject to legislative amendments of substance.

Second, the principle of financial independence requires that the Member States may not put their NCBs in a position where they have insufficient financial resources to carry out their ESCB- or Eurosystem-related tasks, as applicable.

Third, central banking tasks comprise in particular those tasks that are related to the tasks listed in Article 127(2), (5) and (6) of the Treaty.

Fourth, new tasks conferred on an NCB which are atypical of NCBs' tasks, or which are clearly discharged on behalf of and in the exclusive interest of the government or of other public entities, should be considered as government tasks. In that context, a distinction should be drawn between liquidity- and solvency-related tasks of NCBs. While, for purposes of the monetary financing prohibition, solvency support is a government task, liquidity-related tasks, the ultimate objective of which are to finance the economy, are central banking tasks.

2.2.2 Specific considerations

An important criterion for classifying a new task as a government task is, therefore, the impact of the task on the institutional, financial and personal independence of the NCB. In particular, the following should be taken into account.

First, it should be assessed whether the performance of the new task creates inadequately addressed conflicts of interests with existing central banking tasks, and does not necessarily complement those existing central banking tasks. If a conflict of interest arises between existing and new tasks, there should be sufficient mitigation in place to adequately address that conflict. Complementarity between the new task and existing central banking tasks should not, however, be interpreted extensively, so as to lead to the creation of an indefinite chain of ancillary tasks. Complementarity should also be examined from the point of view of the financing of those tasks.

Second, it should be assessed whether without new financial resources the performance of the new task is disproportionate to the financial or organisational capacity of the NCB concerned, and may negatively impact its capacity to properly perform existing central banking tasks.

Third, it should be assessed whether the performance of the new task does not fit into the institutional set-up of the NCB in the light of central bank independence and accountability considerations.

Fourth, it should be assessed whether the performance of the new task harbours substantial financial risks.

Fifth, it should be assessed whether the performance of the new task exposes the members of the NCB's decision-making bodies to political risks which are disproportionate and may also impact on their personal independence and, in particular, the guarantee of the term of office under Article 14.2 of the Statute of the European System of Central Banks and of the European Central Bank.

- 2.2.3 Any final assessment on the qualification of a task given to an NCB as either falling within the scope of a central banking task or a government task will be guided by the objective of ensuring the consistent application of the prohibition of monetary financing within the Eurosystem and the ESCB to the extent that it applies to its members.

3. Specific observations

3.1 *Collection of additional insurance data for taxation purposes*

Under Law No 39/2015 on insurance and on amendments of certain laws (hereinafter the 'law on insurance'), NBS receives from insurance undertakings data that supports the items used in the calculation of the base for the annual premium transfers in respect of compulsory motor vehicle liability insurance². However, the draft law substantially extends the scope of the data to be reported to NBS by covering all non-life insurance products and increases the reporting frequency by requiring quarterly reporting. Although neither the law on insurance nor the draft law are clear on how and for which purposes the data is to be processed by NBS, the draft law significantly expands the substance of the task initially conferred on NBS, which should therefore be assessed against the prohibition of monetary financing.

3.2 *Tasks not related to basic central banking tasks listed in Article 127(2) and (5) of the Treaty*

² The ECB has not been consulted on the assignment of the new task under the law on insurance.

The collection, maintenance and processing of the data that supports the items used in the calculation of the base for quarterly partial premium transfers is not linked to any of the central banking tasks listed in Article 127(2) and (5) of the Treaty. In addition, such new tasks are not complementary to the existing supervisory tasks of NBS. Although NBS is responsible for the supervision of insurance undertakings, the objectives of its supervisory tasks substantially differ from the objectives of the new tasks conferred on NBS under the draft law. While the main objective of the prudential supervision over insurance undertakings is the protection of policyholders and beneficiaries³, the objective of the new tasks conferred on NBS under the draft law is linked to the financing of certain pre-defined expenses incurred in the performance of government tasks. In the ECB's view, the fact that such expenses are related to losses or to the negative effects of losses, which would potentially be covered by non-life insurance products offered by the insurance undertakings, does not form a sufficient rationale to consider the new tasks conferred on NBS under the draft law as complementary to NBS's supervisory tasks.

3.3 *Discharge of tasks on behalf of and in the exclusive interest of the government*

The proceeds of the partial premium transfers are to be used by the relevant Ministries of the Slovak government for specific pre-defined purposes and contribute to the financing of government tasks, e.g. to finance expenses of fire brigades, renewal and modernisation of the healthcare infrastructure, implementation of flood management measures and to cover unforeseen expenditures of the central government. The collection, maintenance and processing of the data that supports the items used in the calculation of the base for the quarterly partial premium transfers are, therefore, also in the interest of the Slovak government.

3.4 *Atypical tasks*

No ESCB NCB currently performs a task that would be comparable to the task introduced by the draft law. The task conferred on NBS by the draft law must be distinguished from the tasks performed by other ESCB NCBs related to the supervision of insurance undertakings, financial stability or collection of statistical data. In particular, some ESCB NCBs collect data from insurance undertakings in order to obtain sufficient information about their financial situation or to collect fees which ultimately finance the supervisory tasks of the relevant ESCB NCBs. Some ESCB NCBs are involved in the process of computing and imposing fees and contributions on financial institutions for the purpose of e.g. deposit guarantee funds, resolution funds, investor compensation funds or insurance compensation funds. Unlike the task conferred on NBS under the draft law, these tasks are either complementary to the ESCB NCBs' supervisory mandates or related to financial stability. Therefore, it can be concluded that the new task under the draft law is an atypical central banking task.

3.5 *Extent to which the performance of tasks poses substantial or disproportionate financial burden*

The principle of financial independence requires NCBs to have sufficient means to carry out not only their ESCB-related tasks, but also their national tasks from both an operational and financial point of view. Allocation of specific non-ESCB related tasks to NCBs, e.g. collection of data that

³ See Article 79(2) of the law on insurance.

supports the items used in the calculation of the base for insurance premium transfers, also requires an allocation of additional human and financial resources for these tasks in order to ensure that they are carried out in a manner that will not affect the NCB's operational capacity to perform its ESCB-related tasks⁴. The draft law does not address in any way the additional expenses resulting from the conferral on NBS of the new task. The draft law is not clear on how NBS should treat and process the data received. Therefore, it is difficult to assess whether the performance of the new task is disproportionate to the financial or organisational capacity of NBS and whether it may negatively impact NBS's capacity to properly perform its existing central banking tasks.

3.6 *Extent to which the performance of tasks poses substantial financial or disproportionate political risks*

In the absence of any provision in the draft law which would exclude the liability of NBS for the exercise of the tasks under the draft law, NBS would ultimately be liable for damages in accordance with the Slovak state liability rules. Therefore, the new task conferred on NBS under the draft law would entail additional financial risks, which would have to be assumed by NBS in relation to tasks performed in the interest of the Slovak government.

3.7 *Conclusion*

The ECB considers the new task conferred on NBS under the draft law to be a government task. Therefore the ECB expresses its general concern regarding the proposed conferral of such task on NBS. With a view to dispelling the monetary financing concerns associated with carrying out a government task, it should be ensured that NBS has sufficient resources to perform the new task without affecting its capacity to carry out its central banking tasks. To this end, it is necessary that NBS is fully reimbursed for any additional costs associated with performing the new task and, in the case of application of the Slovak state liability rules, the Slovak Republic has no indemnification rights.

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

Done at Frankfurt am Main, 19 September 2016.

[signed]

The President of the ECB

Mario DRAGHI

⁴ See for example paragraph 3.1.2 of Opinion CON/2016/6 and paragraph 3.1.1 of Opinion CON/2016/16. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.