



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 29 June 2022

on the screening of foreign investments

(CON/2022/22)

Introduction and legal basis

On 16 May 2022 the European Central Bank (ECB) received a request from the Minister for Economy of the Slovak Republic for an opinion on a draft law on the screening of foreign investments and on amendments to certain acts (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) and the ECB's tasks concerning the prudential supervision of credit institutions pursuant to Article 127(6) of the Treaty. 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 aims to further implement Regulation (EU) 2019/452 of the European Parliament and of the Council². The draft law covers (a) the screening of foreign investments on grounds of the protection of security and public order in the Slovak Republic and security and public order in the Union; (b) certain aspects of cooperation between the Slovak Republic and other Member States and the European Commission under Regulation (EU) 2019/452; (c) the competences of the Ministry of Economy of the Slovak Republic (hereinafter the 'Ministry') and selected government authorities as regards the screening of foreign investments; (d) the rights and obligations of a foreign investor and the target entity in connection with the screening of foreign investments; and (e) procedural rules applicable in the context requests for cooperation.
- 1.2 The Ministry, when performing its tasks under the draft law and Regulation (EU) 2019/452, will be authorised to request the cooperation of government authorities, local government authorities and public institutions³. These authorities are required to cooperate with the Ministry at its request, unless there are any specific national legislative provisions preventing them from providing requested

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).

² Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (OJ L 79I, 21.3.2019, p. 1).

³ See Article 46 of the draft law.

information⁴. The draft law does not exhaustively list institutions that are exempted from the obligation to cooperate with the Ministry at its request. Furthermore, the obligation to cooperate will not apply in cases where the provision of information could jeopardise the purpose or objective of an investigation, administrative proceedings or judicial proceedings, or result in a breach of the confidentiality obligation as set out in separate legislative acts⁵.

- 1.3 When cooperation is requested, the concerned authorities must supply, within the time limit set by the Ministry, the information identified by the Ministry in the request for cooperation, as well as other information that may help to evaluate the risk of a negative impact of foreign investments, a qualified submission, a comment by an Union Member State or opinion by the European Commission, or the impact of a foreign investment on security and public order in the Slovak Republic⁶.
- 1.4 The Ministry, when performing its tasks under the draft law and Regulation (EU) 2019/452, will also be authorised to access, without charge, the information systems of public administration as defined by Article 2(4) of Law No. 95/2019 Coll. on information technology in public administration⁷. The government authorities are required to accommodate the request for access to public administration information systems unless specific laws prevent them from doing so. Based on the combined reading of Articles 2(4), 2(5) and 5(2) of Law No. 95/2019 Coll., the ECB understands that information systems of NBS and the ECB do not fall within the scope of the draft law.

2. Specific observations

- 2.1 The ECB understands that NBS will be included among the government authorities and public institutions whose cooperation the Ministry may request when performing its tasks under the draft law and Regulation (EU) 2019/452⁸. The ECB also understands that target entities as defined in the draft law include credit and financial institutions⁹, and that a request for NBS' cooperation may therefore include such entities. Furthermore, the ECB understands that 'foreign investor' refers to a natural person or a third-country undertaking.¹⁰
- 2.2 Council Regulation (EU) No 1024/2013¹¹ confers on the ECB specific tasks concerning the prudential supervision of credit institutions pursuant to Article 127(6) of the Treaty. The ECB carries out these tasks within a single supervisory mechanism composed of the ECB and national competent authorities. Accordingly, NBS is also responsible for the prudential supervision of credit institutions¹², within the framework of Article 6 of Council Regulation (EU) No 1024/2013. Both the ECB and NBS,

⁴ See Article 46(2) of the draft law. Footnote 16 refers to Law No. 215/2004 Coll. on the protection of classified information and on amendments to certain acts, as amended.

⁵ See Article 46(3) of the draft law.

⁶ See Article 46(4) of the draft law.

⁷ See Article 47 of the draft law.

⁸ Nevertheless, it is worth noting that NBS, as a sui generis institution, might not fall within any of the authorities listed.

⁹ Article 5 of the draft law states that the 'target entity is an existing or newly-established enterprise or other entity established in the Slovak Republic, regardless of its legal form, legal personality, the means of funding and scope of business activities, including activity aimed at profit making'.

¹⁰ See Article 4 of the draft law.

¹¹ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

¹² Article 2(3) and Article 36 of Law No. 566/1992 Coll. on the National Bank of Slovakia and Article 6(1) of Law No. 483/2001 Coll. on Banks and on amendments and supplements to certain laws.

- when performing prudential supervision, must apply the relevant provisions of Union law relating to prudential supervision, including as contained in Directive 2013/36/EU of the European Parliament and of the Council¹³, as transposed in national law.
- 2.3 Pursuant to Article 53 of Directive 2013/36/EU¹⁴ the competent authorities for prudential supervision are bound by professional secrecy. Persons having access to confidential information are subject to professional secrecy requirements at least equivalent to those referred to in Article 53(1) of Directive 2013/36/EU¹⁵. As noted in previous ECB opinions¹⁶, national legislation should be compatible with the obligation under Union law to maintain professional secrecy in respect of confidential supervisory information. Disclosure of such confidential information can only be permitted in the cases specified in Article 53 to 62 of Directive 2013/36/EU.
- 2.4 According to the provisions of Articles 56 to 59 of Directive 2013/36/EU, as transposed into national law, information relating to prudential supervision may be transmitted to specific entities, including other departments of central government administrations responsible for law on the supervision of institutions, financial institutions and insurance undertakings and to inspectors acting on behalf of those departments¹⁷. However, such disclosures may be made only where necessary for reasons of prudential supervision, and prevention and resolution of failing institutions¹⁸. The ECB understands that the Ministry has no competence in these fields, under Union or national law¹⁹. Therefore, even if the Ministry requested cooperation, NBS, in its capacity as a prudential supervisor bound by Directive 2013/36/EU and national provisions transposing it, would not be allowed to share confidential information obtained in the course of the prudential supervision of credit institutions when fulfilling such request.
- 2.5 Furthermore, for prudential supervisory purposes, the ECB is competent to act in questions of qualifying holdings in credit institutions established in SSM participating Member States²⁰. The procedure for the screening of foreign investments laid down in Regulation (EU) 2019/452 is recognised to be different from the prudential assessment of acquisitions of qualifying holdings in the financial sector, which is a distinct procedure with a specific objective²¹. If the Ministry approached NBS with a request for cooperation concerning a credit institution in a qualifying holding procedure, NBS would have to consult the ECB, which would be bound by the relevant provisions of Union law, including the provisions of Article 53 et seq. of Directive 2013/36/EU.

13 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

14 See Section II, Chapter I of Title VII of Directive 2013/36/EU.

15 See Article 59(1), second subparagraph of Directive 2013/36/EU.

16 See paragraphs 2.1 and 2.3 of Opinion CON/2021/13 and paragraph 2.3 of Opinion CON/2019/20. All ECB opinions are available on EUR-Lex.

17 See Article 59(1) Directive 2013/36/EU.

18 See Article 59(1), second subparagraph Directive 2013/36/EU.

19 See also Article 3(3) of Law no 747/2004 Coll. on Supervision of the financial market and on amendments and supplements to certain laws.

20 Article 4(1)(c) and Article 15 of Council Regulation (EU) No 1024/2013.

21 See recital 37 of Regulation (EU) 2019/452: '*This Regulation does not affect Union rules for the prudential assessment of acquisitions of qualifying holdings in the financial sector, which is a distinct procedure with a specific objective ...*'.

This opinion will be published on EUR-Lex.

Done at Frankfurt am Main, 29 June 2022.

[signed]

The President of the ECB

Christine LAGARDE