EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 22 December 2008

at the request of the Slovenian Ministry of Finance
on a draft decree laying down criteria and conditions for granting loans
under Article 81.a of the Law on public finance

(CON/2008/92)

Introduction and legal basis

On 16 December 2008 the European Central Bank (ECB) received a request from the Slovenian Ministry of Finance (hereinafter the 'Ministry') for an opinion on a draft decree laying down criteria and conditions for granting loans under Article 81.a of the Law on public finance (hereinafter the 'draft decree'). The draft Decree was adopted by the Slovenian Government on 18 December 2008.

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

1.1 The legal basis for the adoption of the draft decree is the Law on public finance (hereinafter the 'Law')[2] which provides for four categories of measures for limiting the effects of the global financial crisis in Slovenia and maintaining the stability of the domestic financial system. One of these measures is the provision of State loans to credit institutions and other financial companies. Article 88.a(1) of the Law requires the Government to adopt separate decrees for each of these measures setting out the criteria, conditions and charges for their implementation.

1.2 Solvent credit institutions that hold a valid licence to provide banking services issued by Banka Slovenije and have their corporate seat in Slovenia are eligible for a State loan. State loans may be granted to those credit institutions which fulfil minimum capital requirements under the Law on

1 OJ L 189, 3.7.1998, p. 42.

2 Law on public finance, published in *Uradni list Republike Slovenije* No 79/1999.

banking[3] but which, due to the effects of the global financial crisis, are not able, even with State guarantees, to acquire funds in the financial and interbank markets to finance their obligations and operating costs.

1.3 Credit institutions must use the funds obtained through a State loan to enhance economic activities and ensure appropriate credit for the support of the economy and the population. The Slovene Export and Development Bank (hereinafter the 'SID Bank') is responsible for assessing whether a credit institution fulfils the relevant conditions for obtaining a State loan. Upon reaching an affirmative decision, the SID Bank advises the Ministry to recommend that the Government adopt a decision granting the loan. As the competent supervisory authority, Banka Slovenije provides its assessment of the necessity and appropriateness of granting individual loans to credit institutions and is notified by the Government of the adoption of any decision granting such a loan.

1.4 The decision to grant a loan must set out the terms and conditions of the loan agreement as well as other commitments accepted by the beneficiary, e.g. restrictions on the income and other benefits of the company's management, including options over the company's shares, and restrictions with respect to dividend payments and other shareholder rights. The maturity of the loans may range from one year up to a maximum five years and may not exceed the maturity of the resources that the State acquires by issuing debt securities on the financial market or by taking loans at the time of granting loans. The annual interest rate of the loan consists of the cost of borrowing with the State guarantee arising from issuing debt securities or from taking loans of comparable maturity and the credit risk margin based on a long-term credit assessment of the credit institution by internationally recognised rating agencies.

1.5 The draft decree is a temporary measure and will only apply until 31 December 2010.

2. General observations

2.1 The ECB was consulted by the Ministry on the draft decree on 16 December 2008 and was asked to give priority to the consultation request as the pressing need to adopt the draft decree did not allow for a normal consultation period. No specific deadline for the adoption of the ECB opinion was indicated and the ECB was not notified of the advanced status of the adoption procedure. The draft decree was then adopted on 18 December 2008, without any prior notification of the ECB. The ECB reiterates the position which it has previously communicated to the Slovenian authorities[4] that even cases of particular urgency do not abrogate the duty of the national authorities under Article 105(4) of the Treaty to consult the ECB on national draft legislative provisions falling within its fields of competence. In the present case, the ECB was consulted, but no time limit was set for the submission of the ECB's opinion and no notice was given that the law were to be

3 Law on banking published in *Uradni list Republike Slovenije* No 131/2006.

4 See paragraph 2.4 of ECB Opinion CON/2008/76 of 25 November at the request of the Slovenian Ministry of Finance on a draft law amending the Law on public finance, available on the ECB's website at www.ecb.europa.eu.

adopted two days after the request for an opinion. The ECB has been flexible and able to respond within extremely short time limits to consultation requests received during this year's financial turmoil, but would have welcomed being consulted on the present Slovenian draft decree at an earlier stage in order to ensure that the adopting authority would have had sufficient time to take the ECB's considerations into account. It follows from Article 3(4) of Decision 98/415/EC that once a consultation request has been submitted to the ECB, Member States are obliged to suspend the process of adoption of draft legislative provisions, pending receipt of the ECB's opinion or the expiry of a time limit set for the submission of the ECB opinion in accordance with Decision 98/415/EC[5].

2.2 The draft decree was adopted on the basis of the Law on which the ECB issued its Opinion CON/2008/76. The ECB is now consulted on legislation implementing the Law. Accordingly, the observations made in Opinion CON/2008/76 also apply to the draft decree.

3. Specific observations

3.1 *Costs of State loans imposed on receiving credit institutions*

Pursuant to Article 9 of the draft decree, the amount of the annual interest rate for a loan is set by the Government when granting the loan. This is based on a proposal by the SID Bank and the Ministry and is calculated taking into account the cost of borrowing with the State guarantee arising from issuing debt securities or from taking loans increased by the credit risk margin. The latter is based on a long-term credit assessment of the credit institution by internationally recognised rating agencies. In addition, the SID Bank charges an up-front fee of 25 basis points for processing the State loan application. In Opinion CON/2008/76[6], the ECB emphasises that it is crucial to ensure the coordination of the pricing of State measures under the Law within the euro area and the EU, given that a level playing field is of the essence. Such prices should be risk-based and market-oriented, and determined on the basis of the costs of a corresponding instrument in the market. In this respect, the ECB appreciates the additional information provided in the Annex to the draft decree[7].

3.2 *Central bank involvement in the support measures*

The ECB understands that under the draft decree, Banka Slovenije is responsible for various tasks related to the implementation of the measures. In particular, Banka Slovenije will be responsible for assessing the necessity and appropriateness of granting a loan to a credit institution, indicating whether the credit institution concerned is eligible for the loan under the Law and the draft decree

5 See Title IV, Section 1 of the Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions, available on the ECB's website at www.ecb.europa.eu.

6 See paragraph 3.4 of Opinion CON/2008/76.

7 Concerning the methodology for benchmarking the pricing, please also see the 'Communication from the Commission - The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition' C(2008) 8259 final of 5 December 2008.

and whether granting the loan is the most appropriate measure to achieve the aim of the Law[8]. In addition, Banka Slovenije provides its opinion on the maturity of the loan to be granted[9].

In line with its previous opinions, the ECB reminds the Slovenian authorities that the tasks performed by Banka Slovenije must comply with the monetary financing prohibition under Article 101 of the Treaty and Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty[10]. Compliance with the prohibition of monetary financing in relation to Banka Slovenije's activities under the draft decree will, *inter alia*, require appropriate remuneration of such activities. It is also expected that tasks to be performed by Banka Slovenije for the benefit of the State support measures will be conducted in a manner fully compatible with Banka Slovenije's institutional and financial independence, which is a safeguard for the proper performance of Banka Slovenije's tasks under the Treaty and the Statute of the European System of Central Banks and of the European Central Bank.

Moreover, the ECB understands that the entire cost of the loans granted by the Slovenian State is exclusively financed from the State funds acquired by additional State borrowing in accordance with Article 81.a of the Law. The ECB understands that such additional State borrowing will not include prefinancing or refinancing of the State budget by Banka Slovenije, e.g. in the form of extension of overdraft credit facilities by Banka Slovenije to the Slovenian State or in the form of Banka Slovenije's direct acquisition of the Slovenian State's debt instruments. In this respect, the ECB reminds the Slovenian authorities that, under Article 101(1) of the Treaty, central banks are prohibited from extending credit to, or purchasing debt instruments directly from, the public sector and/or Community institutions or bodies, i.e. debt instruments issued in the primary market. At the same time, debt instrument purchases made on the secondary market must not be used to circumvent the objective of Article 101(1) of the Treaty[11].

3.3 *Exchange of confidential information*

Under the draft decree, Banka Slovenije is required to provide to the SID Bank an assessment of the necessity and appropriateness of granting individual loans to credit institutions. Banka Slovenije, as the competent supervisory authority, has access to confidential information about individual credit institutions. It may thus occur that this information is disclosed to the SID Bank as part of Banka Slovenije's assessment. Given the sensitive nature of supervisory information, the ECB reminds the Slovenian authorities of the importance of safeguarding the confidentiality and the need for a valid legal basis for any exchange of such information.

8 See Article 6 of the draft decree.

9 See Article 8 of the draft decree.

10 OJ L 332, 31.12.1993, p. 1.

11 See recital 7 of Council Regulation (EC) No 3603/93.

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

Done at Frankfurt am Main, 22 December 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET