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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 19 December 2008

at the request of the Slovenian Ministry of Finance
on a draft decree laying down criteria and conditions for granting guarantees
under Article 86.a of the Law on public finance

(CON/2008/88)

Introduction and legal basis

On 3 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 guarantees under Article 86.a of the Law on public finance (hereinafter the 'draft Decree'). The draft Decree was adopted by the Slovenian Government on 4 December 2008[1].

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and on 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[2], 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')[3] 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 guarantees to credit institutions for up to a total of EUR 12 billion. 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.

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1 *Uredba o merilih in pogojih za izdajanje poroštev po 86.a členu Zakona o javnih financah*, published in *Uradni list Republike Slovenije* No 115/2008.

2 OJ L 189, 3.7.1998, p. 42.

3 *Zakon o javnih financah*, published in *Uradni list Republike Slovenije* No 79/1999. The Law as last amended by the Law amending Law on public finance (*Uradni list Republike Slovenije* No 109/2008).

1.2 Solvent credit institutions which hold a valid licence to provide banking services issued by Banka Slovenije and which have their corporate seat in Slovenia are eligible for a State guarantee. State guarantees may be granted to those credit institutions which fulfil minimum capital requirements pursuant to the Law on banking[4] but which, due to the effects of the global financial crisis, are not able, without State guarantees, to carry out borrowing transactions in the financial and interbank markets to finance their obligations and operating costs.

1.3 The terms and conditions for borrowing by credit institutions subject to a State guarantee must be essentially comparable to those agreed for borrowing by the State for similar types of transactions. Credit institutions must primarily use the funds obtained on the basis of a State guarantee for enhancing economic activities and ensuring appropriate credit for the support of the economy. The Ministry will lead the procedure for granting State guarantees and if it assesses that a credit institution fulfils the prescribed conditions, it will recommend that the Government should adopt a decision granting a guarantee. As the competent supervisory authority, Banka Slovenije will give its assessment of the necessity and appropriateness of granting a guarantee and it will be notified by the Government of the adoption of any decision granting a guarantee. A fee will be charged for guarantees. The fee will be calculated on the basis of the maturity of the guarantee and on a long-term credit assessment of the credit institution by internationally recognised rating agencies.

1.4 The draft Decree will be temporary and will apply until 31 December 2010.

2. General observations

2.1 The ECB was consulted by the Ministry on the draft Decree on 3 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, notwithstanding the frequent informal contacts between the ECB and the Ministry, the ECB was not notified of the advanced status of the adoption procedure. The draft Decree was then adopted on the day following the consultation of the ECB (on 4 December 2008), without any prior notification of the ECB. The ECB reiterates the position which it has previously communicated to the Slovenian authorities[5] 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. The ECB would have welcomed being consulted on the 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

4 *Zakon o bančništvu*, published in *Uradni list Republike Slovenije* No 131/2006. The Law as last amended by the Law amending the Law on banking (*Uradni list Republike Slovenije* No 109/2008).

5 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.

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[6].

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 and the observations made in Opinion CON/2008/76 also apply to the draft Decree.

3. Specific observations

3.1 *Scope of the obligations covered by State guarantees*

The draft Decree does not specify further which obligations may be covered by State guarantees. Pursuant to Article 86.a (4) of the Law, guarantees may be granted to cover liabilities with a maturity of from 3 months to 5 years arising from borrowing in the financial or interbank markets which, for the purposes of the Law, comprise all liabilities incurred by an eligible credit institution towards other credit institutions and other financial companies except liabilities arising from structured financial instruments, subordinated liabilities of credit institutions and liabilities to the parent entity and its associated entities. In its Opinion CON/2008/76[7] the ECB recommended that the extension of State guarantees to cover interbank deposits should be avoided in order to ensure effective implementation of the single monetary policy in the euro area. In this respect, the ECB notes that further clarification regarding the scope of the coverage of State guarantees is still needed.

3.2 *Charges imposed on receiving credit institutions*

Pursuant to Article 7 of the draft Decree, the amount of the annual fee for a guarantee will be set by the Government in its decision granting the guarantee. It will be based on a proposal by the Ministry taking into account the maturity of the guarantee and a long-term credit assessment of the credit institution by internationally recognised rating agencies. In its Opinion CON/2008/76[8], the ECB emphasised that it is crucial to ensure the coordination of the pricing of State guarantees within the euro area and the EU, given that a level playing field is of the essence. The price of a State guarantee should be risk-based and market-oriented, and determined on the basis of the costs of a corresponding guarantee in the market. In this respect, the ECB appreciates the additional information provided in the Annex to the draft Decree. It is important that the pricing of a State guarantee should link the level of charges to be paid by a credit institution receiving a guarantee to the residual maturities of the guaranteed obligations with maturities exceeding one year. The ECB also stresses the need for further harmonisation within the euro area which will be conducive to

6 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.

7 See paragraph 3.3 of Opinion CON/2008/76.

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

ensuring that State support measures do not negatively affect the single monetary policy of the euro area[9].

3.3 *Central bank involvement in the support measures*

The ECB understands that Banka Slovenije will be responsible for various tasks for implementing the measures under the draft Decree. 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].

Banka Slovenije will process applications submitted by credit institutions requesting a State guarantee, ensuring priority treatment. Moreover, Banka Slovenije will assess the necessity and appropriateness of granting a guarantee and indicate whether the credit institution concerned is eligible for the guarantee under the Law and the draft Decree, and whether the grant of a guarantee is the most appropriate measure for achieving the aim of the Law[11].

The ECB emphasises that the tasks to be performed by Banka Slovenije must comply with the above prohibition of monetary financing as regards their remuneration. 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 the Banka Slovenije's tasks under the Treaty and the Statute of the European System of Central Banks and of the European Central Bank. Finally, the ECB understands that the entire costs of the guarantees issued by the Slovenian State will be exclusively financed from budgetary resources and that they will in no event lead to the provision of an overdraft credit facility by Banka Slovenije.

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

Done at Frankfurt am Main, 19 December 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET

9 See e.g. paragraph 3.2 of ECB Opinion CON/2008/52 of 17 October 2008 at the request of the Spanish State Secretary for Economic Affairs on a Royal Decree-Law creating a Fund for the acquisition of financial assets and on a Royal Decree-Law adopting urgent financial and economic measures in relation to the concerted European action plan of the euro area countries; and paragraph 3.7 of ECB Opinion CON/2008/81 of 1 December 2008 at the request of the Hungarian Ministry of Finance on a draft law on strengthening the financial intermediary system.

10 OJ L 332, 31.12.1993, p. 1.

11 See Articles 3-6 of the draft Decree.