EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 5 August 2011

on amendments to the Law on prevention of late payments

(CON/2011/61)

Introduction and legal basis

On 19 July 2011, the European Central Bank (ECB) received a request from the Slovenian Ministry of Finance for an opinion on a draft law amending the Law on prevention of late payments (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/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 Banka Slovenije. 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 amends the Law on prevention of late payments[2] (hereinafter the 'Law') that was addressed in Opinion CON/2011/25[3]. The Law, adopted on 4 March 2011, introduced measures to prevent late payments as part of the Slovenian Government's efforts to improve economic and business conditions for small and medium-sized enterprises. It defined the moment of late payment and the consequences of late payment for contracts entered into by economic operators or by economic operators and public authorities where one party provides goods or services and the other party provides payment.

1.2 Since the adoption of the Law, economic operators have raised many issues with the Ministry about its proper implementation. The amendment intends to resolve several of these issues. According to the consultation request, the draft law primarily amends the Law's rules on obligatory multilateral set-off of obligations. However, the draft law also regulates other issues, including which authorities supervise compliance with the Law.

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1 OJ L 189, 3.7.1998, p. 42.

2 *Zakon o preprečevanju zamud pri plačilih*, published in *Uradni list Republike Slovenije* No 18/2011.

3 All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

2. General observation

The Law was adopted before the ECB issued its opinion[4]. The ECB's observations could therefore not be taken into account in the final version of the Law; however, a number of the observations remain relevant.

3. Independence of Banka Slovenije

3.1 *Application of the Law to Banka Slovenije's contractual relations*

As noted in Opinion CON/2011/25[5], Banka Slovenije falls under the definition of 'public authorities', so the Law applies to its contractual relations in the area of administration, in particular. However, Article 2(4) of the Law exempts Banka Slovenije where it exercises its exclusive competences pursuant to the law governing Banka Slovenije or any other laws or Union regulations laying down the exclusive competences of Banka Slovenije. The ECB welcomed this provision as it ensured that the Law would not interfere with the tasks of the European System of Central Banks (ESCB) and the Eurosystem carried out by Banka Slovenije in accordance with the Treaty and the Statute of the European System of Central Banks and of the European Central Bank, in particular the implementation of the monetary policy of the Union. For the sake of clarity, the ECB repeats its proposal to further improve the Law by referring specifically to Banka Slovenije's competences as part of the ESCB and the Eurosystem.

3.2 *Supervision of the implementation of the Law*

3.2.1 Article 9 of the draft law explicitly allocates supervision of implementation of the Law to the Market Inspectorate of the Republic of Slovenia and the Tax Administration of the Republic of Slovenia. This eliminates concerns about a possible allocation of this role to Banka Slovenije, which was expected under the current wording of the Law, and about related issues regarding the allocation of sufficient human and financial resources to Banka Slovenije for such task[6].

3.2.2 Under the Law, Banka Slovenije is subject to supervision. The ECB reiterates that, in order to fully respect central bank independence, it should be made clear that any supervision of Banka Slovenije's compliance with the Law should respect its status as an independent central bank under the Treaty.

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

Done at Frankfurt am Main, 5 August 2011.

[signed]

The President of the ECB

Jean-Claude TRICHET

4 For details on the consulting authority's duty to consult the ECB, see paragraphs 2.1 to 2.5 of Opinion CON/2011/25.

5 See paragraph 3.1 of Opinion CON/2011/25.

6 See paragraph 3.5 of Opinion CON/2011/25.