OPINION OF THE EUROPEAN CENTRAL BANK

of 18 April 2016

on the auditing of Banka Slovenije's business operations

(CON/2016/24)

Introduction and legal basis

On 23 March 2016 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 Banka Slovenije (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[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

Banka Slovenije is currently subject to an audit of its financial accounts pursuant to Article 27.1 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'). The purpose of the draft law is to also establish rules for the auditing of Banka Slovenije's operations by the national Court of Audit, which would be compatible with the principle of central bank independence. The draft law provides for the introduction of these rules by adding a new Article to the Law on Banka Slovenije[2].

2. Observations

2.1 As stated in past ECB opinions, notably in relation to various Slovenian draft legislative initiatives[3], whereas a state auditor may not undertake the audit of an NCB's financial accounts, it is possible for a state audit office or similar body that controls the use of public finances, such as the Court of Audit, to undertake an audit in respect of an NCB's activities and use of public finances. However, any state audit office or similar body entrusted with such competences must be subject to a number of safeguards designed to ensure compliance with the principle of central bank independence: (a) the scope of the control should be clearly defined by the legal framework; (b) the activities of the NCB's independent external auditors should not be prejudiced; (c) in line with the principle of institutional independence, as enshrined in Article 130 of the Treaty and Article 7 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).

2 Zakon o Banki Slovenije (ZBS-1) (Ur. l. RS No 72/06 – official consolidated text, and 59/11).

3 See Opinions CON/2015/57, CON/2015/8 and CON/2014/25. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

Statute of the ESCB, the audit should: (i) comply with the prohibition on giving instructions to an NCB and its decision-making bodies, (ii) not interfere with the NCB's ESCB-related tasks, and (iii) be carried out on a non-political, independent and purely professional basis.

2.2 The ECB welcomes the fact that by establishing rules for the auditing of Banka Slovenije the draft law aims to take into account the principle of central bank independence and the related safeguards referred to in paragraph 2.1. In this respect, it is noted that, according to Article 1 of the Law on the Court of Audit[4], the Court is the supreme audit institution for the supervision of the state's accounts, the state budget and all public spending in Slovenia. In relation to other state authorities, the Court of Audit is an autonomous and independent authority. The scope of control of the Court of Audit in relation to Banka Slovenije's operations is defined in paragraph 1 of the new Article introduced by the draft law. This paragraph provides that the Court of Audit must audit the 'regularity' and 'efficiency' of Banka Slovenije's business operations. These terms derive from the Law on the Court of Audit: a 'regularity audit' is therein defined as 'obtaining relevant and sufficient data to enable an opinion to be expressed on the compliance of the business operations with regulations and guidelines that any user of public funds is required to observe in the conduct of the operations', while an 'efficiency' audit is one of the three types of audit that are categorised as so-called 'performance audits', which are defined as 'obtaining relevant and sufficient data to enable an opinion to be expressed on the economy, *efficiency* and effectiveness of the business operations', respectively[5]. Audits of the efficiency of Banka Slovenije's business operations relate to the fields of its organisation, administration, human resources and general operational efficiency. In this manner, and taken together with the explicit provision in paragraph 6 of the new Article introduced by the draft law, which states that when discharging its auditing duties, the Court of Auditors may not interfere with the activities of independent external auditors appointed in accordance with Article 52 of the Law on Banka Slovenije, the draft law also ensures that the Court of Audit may not audit the financial accounts of Banka Slovenije and interfere with or prejudice the activities of Banka Slovenije's independent external auditors appointed in accordance with Article 27.1 of the Statute of the ESCB.

Furthermore, paragraph 2 of the new Article introduced by the draft law explicitly excludes any actions representing the performance of duties under the Law on Banka Slovenije and the Statute of the ESCB from the scope of audit. This provision is important in that it ensures that the audit does not interfere with Banka Slovenije's tasks[6]. In this context, the ECB would remind the Slovenian authorities that, in line with the principle of independence specific to banking supervision, as set out in Article 19 of Council Regulation (EU) No 1024/2013[7], which applies to both the ECB and the national competent authorities when acting within the Single Supervisory Mechanism (SSM), as well as the limitations provided in Article 27.2 of the Statute of the ESCB and Article 20(7) of Regulation (EU) No 1024/2013 in relation to the supervisory tasks conferred on the

4 Zakon o računskem sodišču (ZRacS-1) (Ur. l. RS No 11/01 and 109/12).

5 See Article 20(1) of the Law on the Court of Audit in conjunction with Article 20(3) thereof.

6 Pursuant to Article 2 of the Law on Banka Slovenije, the principle of central bank independence should be respected not only when Banka Slovenije performs ESCB-related tasks, but also when it performs national tasks.

7 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).

ECB, the audit should: (a) not extend to the application and interpretation of supervisory law and practices in the context of the SSM; this is of particular importance in determining the scope of the abovementioned 'regularity' audit; (b) not interfere with and not include the tasks conferred on the ECB by Regulation (EU) No 1024/2013, nor be extended so that it results in an indirect audit of the ECB; and (c) be carried out on a non-political, independent and purely professional basis[8]. The draft law and its implementation should ensure that these principles are respected.

The ECB understands that by referring in paragraph 3 of the new Article introduced by the draft law to 'recommendations' of the Court of Audit and to the 'comply or explain' principle, the draft law aims to ensure that Banka Slovenije is not bound by the opinion of the Court of Audit and that the Court of Audit may not therefore give instructions to Banka Slovenije[9]. To ensure compliance with the principle of central bank independence, the provision in paragraph 5 of the new Article proposed by the draft law is also relevant as excludes from the general duties and competences of the Court of Audit the proposal of the dismissal of a responsible person in certain cases laid down in the Law on the Court of Audit, with respect to the members of the Governing Board of Banka Slovenije[10].

2.3 With reference to paragraphs 4 and 7 of the new Article proposed by the draft law, it is noted that reference is made to Article 37 of the Statute of the ESCB and also to the rules of the ESCB. For the sake of completeness, the ECB recommends that, in addition to references made to Article 37 of the Statute of the ESCB and to the relevant ESCB rules, reference should also be made to the applicable Union laws, including those governing the exchange of statistical and supervisory information.

2.4 Finally, in case this draft law undergoes substantial amendments of a non-technical nature compared with the version received and opined on herein, the ECB should be consulted in relation to those amendments[11].

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

Done at Frankfurt am Main, 18 April 2016.

[signed]

The President of the ECB

Mario DRAGHI

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8 See paragraph 4.3 of Opinion CON/2015/57.

9 It is noted that Article 2 of the Law on Banka Slovenije does not contain a prohibition against the Government and other bodies giving instructions to Banka Slovenije or seeking to influence the members of its decision-making bodies; however a prohibition to this effect is contained in Article 130 of the Treaty and Article 7 of the Statute of the ESCB.

10 See Article 29 of the Law on the Court of Audit.

11 See the Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions, dated October 2015. The Guide is available on the ECB's website at www.europa.eu.