EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 1 June 2010

on amendments to several provisions of the Law on banking

(CON/2010/46)

Introduction and legal basis

On 4 May 2010, 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 banking (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 and sixth indents 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 and 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 law

1.1 The draft law implements provisions of several directives into Slovenian legislation (Directives 2009/111/EC[2], 94/19/EC[3], 2009/14/EC[4] and 2010/16/EU[5]). However, the consulting authority mentions in its consultation request that the draft law also includes a number of provisions amending the current Law on banking[6] that do not relate to transposition of directives. In line with Article 1(2) of Council Decision 98/415/EC, this opinion only covers the latter provisions.

1.2 Several provisions of the draft law are connected with the rules governing the Slovenian deposit guarantee scheme as laid down in the Law on banking. It is an ex post financed scheme, with the necessary funds being provided by the participating credit institutions and, in certain cases, also by the Slovenian State. The draft law clarifies the treatment of certain categories of deposits, taking

1 OJ L 189, 3.7.1998, p. 42.

2 Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (OJ L 302, 17.11.2009, p. 97).

3 Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ L 135, 31.5.1994, p. 5).

4 Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay (OJ L 68, 13.3.2009, p. 3).

5 Commission Directive 2010/16/EU of 9 March 2010 amending Directive 2006/48/EC of the European Parliament and of the Council as regards the exclusion of a certain institution from the scope of application (OJ L 60, 10.3.2010, p. 15).

6 *Zakon o bančništvu*, published in *Uradni list Republike Slovenije* No 131/2006.

into account their nature and their holders and assigns Banka Slovenije certain new and modified tasks relating to the administration of the scheme[7]. In addition, certain existing provisions of the Law on banking which, as stated in the draft law's explanatory memorandum, might give rise to concerns regarding monetary financing by Banka Slovenije of the State's obligations under the scheme are amended.

1.3 Pursuant to the Law on banking, credit institutions have established a system for the exchange of information on the credit standing of their clients. The draft law includes certain amendments with respect to the information to be entered and processed in the system and introduces, among other things, a 'credit score' indicating a client's creditworthiness, which is determined on the basis of a common methodology. The draft law also includes a number of minor and editorial amendments to the Law on banking.

2. General observation

The ECB would like to point out that any widening of Banka Slovenije's tasks has to be supported by ensuring sufficient human and financial resources, both in terms of quantity and quality, so as to enable performance of these tasks without affecting Banka Slovenije's capacity to carry out its European System of Central Banks-related tasks.

3. Compliance with the prohibition of monetary financing

3.1 Pursuant to the Law on banking in force today, as amended in the relevant part by an amendment to the Law on banking in 2008[8], which was not subject to a consultation procedure with the ECB, the Slovenian State shall guarantee repayment of (i) guaranteed deposits held at a bank subject to bankruptcy proceedings above the amount covered by the inter-bank deposit guarantee scheme; and (ii) guaranteed deposits up to the abovementioned amount if banks with their head offices in the Republic of Slovenia cannot provide sufficient funds[9]. From the date of the initiation of bankruptcy proceedings, Banka Slovenije will assume on its own behalf and for the account of the Slovenian State the obligation to repay such guaranteed deposits[10]. These provisions imply that Banka Slovenije is obliged to repay the guaranteed deposits before obtaining the relevant funds from the guarantor, i.e. the Slovenian State. This raises the issue of compatibility with the prohibition on monetary financing under Article 123 of the Treaty, according to which the ECB and the national central banks (NCBs) may not, *inter alia*, provide overdraft facilities or any other type of credit

7 These tasks include the adoption of implementing measures, monitoring of the scheme's mechanisms, processing of information from participating institutions and informing depositors and the public about bankruptcy proceedings and the conditions for exercising the right to repayment of guaranteed deposits.

8 *Zakon o spremembah in dopolnitvah Zakona o bančništvu* (ZBan-1B) (*Uradni list Republike Slovenije* No 109/2008).

9 Article 313(1) and (2) of the Law on banking.

10 Article 315(5) of the Law on banking.

facility in favour of the public sector[11]. The Law on banking can be understood as providing for financing of the deposit guarantee scheme by Banka Slovenije, which would be incompatible with the monetary financing prohibition under Article 123 of the Treaty[12].

3.2 In view of the above, the ECB welcomes the draft law according to which the Slovenian State will have to 'provide funds' rather than only a 'guarantee' in the event of activation of the deposit guarantee scheme[13], while the provisions obliging Banka Slovenije to provide funds for the repayment of guaranteed deposits of insolvent banks, on its own behalf against a State guarantee, are removed[14]. As a consequence, any payouts by Banka Slovenije under Article 315(3) of the Law on banking will always be made using funds provided by participating credit institutions (or obtained by realising their assets) and, if necessary, funds provided in advance by the Slovenian State. The ECB is of the view that these draft amendments establish an assurance that there will be no financing of the deposit guarantee scheme contrary to the abovementioned Treaty requirements.

3.3 In line with these draft amendments and for reasons of legal clarity, the ECB would recommend an alignment of the wording of other related provisions of the Law on banking to reflect that the Slovenian State is providing funds rather than a guarantee[15].

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

Done at Frankfurt am Main, 1 June 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET

11 See also 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 [now Articles 123 and 125(1) of the Treaty on the Functioning of the European Union] (OJ L 332, 31.12.1993, p. 1).

12 National legislation providing for the financing by an NCB of a national deposit insurance scheme for credit institutions would only be compatible with the monetary financing prohibition if it were short term, addressed urgent situations, systemic stability aspects were at stake and decisions were at the NCB's discretion; see the ECB Convergence Report of May 2010, p. 33. Relevant ECB opinions in this area are, e.g., paragraphs 11-14 of Opinion CON/2001/32; paragraphs 11-13 of Opinion CON/2005/50; paragraphs 2.1-2.3 of Opinion CON/2007/26; paragraphs 2.2-2.8 of Opinion CON/2008/5; and paragraph 3.2 of Opinion CON/2008/69. All ECB opinions are available on the ECB website at www.ecb.europa.eu.

13 Article 63 of the draft law, amending Article 313(2) of the Law on banking, and Article 66 of the draft law, amending Article 316(1) of the Law on banking.

14 Article 65 of the draft law.

15 See, in particular, Article 66 of the draft law, amending Article 316(1) of the Law on banking, and its erroneous reference to a 'guarantee' in relation to Article 313(2) of the Law on banking.