EUROPEAN CENTRAL BANK

EUROSYSTEM

**OPINION OF THE EUROPEAN CENTRAL BANK**

**of 29 March 2010**

**on a new legal framework concerning integrity and prevention of corruption as regards its application to Banka Slovenije and its decision-making bodies**

**(CON/2010/27)**

## Introduction and legal basis

On 9 March 2010 the European Central Bank (ECB) received a request from the National Assembly of the Republic of Slovenia for an opinion on a draft law on integrity and prevention of corruption (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 is designed as a comprehensive legal framework concerning prevention of corruption in Slovenia. While taking on board a large number of current legal provisions in this area, the draft law introduces several new provisions which go beyond the narrow definition of measures for the prevention of corruption. Its aim is namely to provide the necessary conditions for employees and officials to perform their duties in an honest, professional and transparent manner, and to promote honest and transparent behaviour of public servants and good practices of any person involved in decision-making processes.

1.2 The draft law applies to the public sector, except where certain issues are regulated by other laws, and to the private sector where this is explicitly provided for. It foresees the continuation of the work of the Commission for the prevention of corruption (hereinafter the 'Commission'), an independent State body with the central role in the combating and prevention of corruption, and entrusted with other tasks. The Commission is given important tasks and competences, in particular regarding (i) monitoring compliance with the draft law by its addressees; (ii) requesting information from legal entities; (iii) issuing other requests; (iv) giving information and making

1 OJ L 189, 3.7.1998, p. 42.

proposals to other competent authorities and organisations; and (v) imposing fines for breaches of the draft law's provisions.

1.3 A large part of the draft law is addressed to 'officials'. This term, as defined in the draft law, includes persons holding public office such as the President of the Republic, the Prime Minister, members of the National Assembly, ministers, judges and, explicitly, high-ranking officials of Banka Slovenije, 'unless their rights and obligations are otherwise regulated by the law governing Banka Slovenije or other regulations binding upon Banka Slovenije'[2].

1.4 The main provisions applying to officials are the following:

a) *Rules on incompatibility of functions* prohibit officials, with certain exceptions, from holding other offices or carrying out other activities with the intention of earning income or acquiring other benefits. An official assuming an office must terminate any such other offices or activities within a defined period. If this does not happen, the Commission issues a warning to the official and sets a deadline for compliance. If the Commission establishes that the official has not ceased to hold the office or perform the activities concerned, it communicates its findings to the body responsible for initiating proceedings to terminate the official's office. The Commission may also impose a fine on the official concerned.

b) *Acceptance of gifts* in connection with officials' discharge of office is restricted to gifts not exceeding a defined low value and completely prohibited if a gift does or could influence the official's objective and unbiased discharge of office. All gifts received must be entered in a list maintained by the body or organisation where an official holds office, and copies of such lists must be sent annually to the Commission which will then publish information on the gifts on its website. The Commission also assesses if rules on acceptance of gifts are being followed and, upon discovery of a breach, imposes a fine and informs other competent authorities where appropriate.

c) *Restrictions on business* are aimed at restricting entities where an official holds office from conducting business with other, especially commercial, entities with which the official has managerial or ownership connections. Such restrictions apply during the official's term of office and, to some extent, within one or two years after leaving office.

d) *Conflicts of interest*, both actual and potential, should be avoided by all public officers as defined in the Slovenian Criminal Code[3]. The ECB understands that the definition of public officers includes officials as well as certain other categories of persons. If an actual or potential conflict of interest arises, the public officer in question must immediately cease his work in the relevant area and inform his superior or, if there is no superior, the Commission thereof. If it is established that a conflict of interest exists or could exist, the public officer is removed from the relevant area of work, unless other laws provide for specific procedures for the removal of a public officer. The Commission may also institute a procedure for

2 Article 4(5) of the draft law.

3 Article 37 of the draft law in connection with Article 4(9) of the draft law.

identifying conflicts of interest in the official activities of public officers and, if suspicion is confirmed, communicate its findings to the officer's employer or the relevant competent body and request feedback on the measures taken.

e) *Supervision of wealth* of professional officials and certain other categories of persons, including persons responsible for public procurement, is performed by the Commission. Under the draft law, these persons are obliged to periodically provide the Commission with information on their personal wealth, e.g. income, real estate, securities and cash holdings. If a person fails to provide the relevant information, the Commission has the power to impose a fine and also to decide that the person's salary is gradually reduced every month by one tenth, to the level of the minimum salary, until he provides the requested information. Furthermore, if the Commission establishes that there is a disproportionate increase in a person's wealth relative to his income from the activities allowed by law, or that the information provided differs substantially from the data contained in tax records, the person is required to provide an explanation. If the explanation is not to the Commission's satisfaction, it communicates its findings to the authority where the person works or holds office or the authority responsible for electing or appointing the person, and this authority initiates proceedings for removal from office or other appropriate proceedings.

## 2. General observations

2.1 The draft law defines 'public sector' as having the same meaning as in the Law on public servants[4]. The ECB understands that the definition of public sector in Article 1(2) of that Law does not include Banka Slovenije and, therefore, the relevant provisions of the draft law do not apply thereto. As a consequence, this opinion concentrates on issues which have been identified, through other definitions and provisions, as applicable to Banka Slovenije.

2.2 In general, various definitions of entities and persons covered by the draft law may cause uncertainty regarding the applicability of its provisions in individual cases.

2.3 Article 51 of the draft law requires the National Assembly to adopt a resolution for the prevention of corruption. In the implementation of this resolution and of plans for its implementation, the Commission collaborates with a wide range of entities, including organisations from the public and private sectors. The Commission will monitor the implementation of the resolution on the basis of an action plan, in collaboration with executive agencies indicated in that action plan. The ECB understands that such activities will not interfere with the independent functioning, organisation and decision-making of Banka Slovenije.

4 Article 4(3) of the draft law.

## 3. Requirements applicable to members of Banka Slovenije's Governing Board as 'officials'

3.1 *General*

As mentioned in paragraph 1.3, pursuant to Article 4(5) of the draft law the Governor and other members of Banka Slovenije's Governing Board are subject to the draft law's provisions with respect to officials 'unless their rights and obligations are otherwise regulated by the law governing Banka Slovenije or other regulations binding upon Banka Slovenije'. To the extent that this definition ensures that the draft law does not jeopardise compliance with the provisions on central bank independence included in the Treaty and in the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB') (in particular, Article 130 of the Treaty and Articles 7 and 14.2 of the Statute of the ESCB), the ECB welcomes it[5], as it takes into account the special position of the national central bank and its decision-making bodies as regulated by other legislation. For reasons of legal certainty and clarity, however, a provision could be included in the draft law explicitly identifying which provisions apply to the Governor and other members of Banka Slovenije's Governing Board.

3.2 *Incompatibility of functions, conflicts of interest*

The comment in paragraph 3.1 on the need for compliance with the relevant articles of the Treaty and of the Statute of the ESCB applies especially to the draft law's provisions on incompatibility of functions and conflicts of interest. The ECB understands that the quoted definition from Article 4(5) ensures that the draft law's provisions on incompatibility of functions and on grounds and procedures for relief from office of officials and removal from an area of work of public officers do not apply to the members of Banka Slovenije's Governing Board, since these issues are explicitly regulated by Articles 38, 39 and 39a of the Law on Banka Slovenije.

3.3 *Acceptance of gifts*

The main provisions of the draft law concerning acceptance of gifts by officials correspond to the relevant provisions of the draft law on restrictions and prohibitions for public office holders on which the ECB issued its opinion CON/2008/43[6]. As noted in paragraph 3.2 of that opinion, these provisions are similar to the requirements laid down in the ECB's Code of Conduct for the members of the Governing Council[7] (hereinafter the 'Code of Conduct'). Although the restrictions in the draft law are to a certain extent stricter than the corresponding provisions in Article 3.3 of the Code of Conduct (as regards maximum value, form of gift and applicability of the provisions to officials' family members), they follow the same basic principles as stated in Article 2 of the Code of Conduct. The public disclosure of gifts received also serves the principle of transparency.

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5 On a similar issue, see e.g. paragraph 3.3 of ECB Opinion CON/2009/64 of 27 July 2009 on public access to information on officials' wealth. All ECB opinions are available on the ECB website at www.ecb.europa.eu.

6 ECB Opinion CON/2008/43 of 17 September 2008 at the request of the Slovenian Ministry of Public Administration on a draft law on restrictions and prohibitions for public office holders.

7 Memorandum of Understanding on a Code of Conduct for the members of the Governing Council (OJ C 123, 24.5.2002, p. 9), as amended by the Memorandum of Understanding amending the Memorandum of Understanding on a Code of Conduct for the members of the Governing Council (OJ C 10, 16.1.2007, p. 6).

3.4 *Supervision of wealth*

The main provisions of the draft law concerning supervision of wealth, to the extent that they apply to officials, correspond to the relevant provisions of the draft law on public access to information on officials' wealth on which the ECB issued its opinion CON/2009/64. The main difference, apart from the fact that pursuant to the new draft law the competent authority is the Commission and not the Court of Audit, is the absence in the new draft law of a fine in the amount of the value of any undeclared wealth or of wealth from unexplained sources. Instead, the Commission may forward the case to the State Prosecutors' office or to other competent authorities.

The ECB understands that the possibility of reducing the salaries of members of Banka Slovenije's Governing Board will apply as a general sanction, equivalent to a fine, under the Slovenian legal system and will not interfere with the legal relationship between the central bank and its independent decision-making officials. Under this assumption, the sanction of salary reduction would not jeopardise the personal independence of Banka Slovenije officials as provided for in Article 130 of the Treaty and Article 7 of the Statute of the ESCB, despite the fact that the sanction is linked to the salary of the Governor and the members of Banka Slovenije's Governing Board, provided that the ECB's understanding as follows is correct.

The sanction of salary reduction is understood to be used to speed up the provision of information requested by the Commission and it applies, in addition to certain other persons, to all professional officials in Slovenia, including the President of the Republic, the Prime Minister and members of the National Assembly. Moreover, the sanction will be imposed by the Commission, which is an independent body, and the conditions for the decision on the salary reduction (i.e. the grounds, amount and duration) as well as the legal remedy against such a decision are clearly provided for in the draft law. Pursuant to Article 45(2) of the draft law, the Commission communicates findings on unjustified increases of wealth, or on lack of explanation regarding such increases, to the body competent for electing or appointing the relevant official. In this context, the importance of the appropriate reading of the term 'officials', as explained in paragraph 3.1, is reiterated. On the basis of the above assumptions and understanding, the ECB is of the opinion that the provisions of the draft law on supervision of wealth and the related sanctions are not incompatible with the principle of personal independence.

## 4. Banka Slovenije's duty to present information and documents

Pursuant to Article 16(1) of the draft law, all legal persons governed by public or private law (therefore including Banka Slovenije) are obliged to give the Commission, at its reasoned request and regardless of other laws, all information and documents necessary for the fulfilment of its tasks. Although such a request must include the legal basis, reasons for and purpose of such a request, this obligation is very broad, in particular with respect to Banka Slovenije. Namely, the relevant information necessary for the fulfilment of the Commission's tasks might not only include information on the performance of tasks by Banka Slovenije, its employees and decision-making bodies themselves, but also confidential information

obtained by Banka Slovenije from other entities in the performance of supervisory and statistical tasks. The ECB would recommend an amendment to the draft law to ensure that any exchange of information between Banka Slovenije and the Commission is consistent with Union law regulating the exchange of supervisory and statistical information and professional secrecy[8], as well as with Article 47[9] of the Law on Banka Slovenije.

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

Done at Frankfurt am Main, 29 March 2010.

[signed]

*The President of the ECB*

Jean-Claude TRICHET

8 As regards the relevant Union legislation, see e.g. footnote 27 of ECB Opinion CON/2008/39 of 1 September 2008 at the request of the Polish Minister for Finance on a draft law on the Financial Stability Committee.

9 Pursuant to Article 47(2) of the Law on Banka Slovenije, 'Banka Slovenije may send confidential data under the conditions set out by a law and the Statute of the ESCB'. Pursuant to paragraph 3 of the same Article, 'Banka Slovenije shall prescribe the criteria for defining confidential data and the procedures for handling confidential data concerning the performance of Banka Slovenije's tasks pursuant to this Law or any other law or concerning the activities of Banka Slovenije in the European System of Central Banks.'