EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 31 August 2016

on a central credit register

(CON/2016/42)

Introduction and legal basis

On 29 July 2016, the European Central Bank (ECB) received a request from the Slovenian Ministry of Finance for an opinion on a draft law on the central credit register (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, fourth and sixth indents of Article 2(1) of Council Decision 98/415/EC[1], as the draft law relates to Banka Slovenije, the collection, compilation and distribution of financial and banking statistics, and the 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 lays down the legal framework governing the establishment and operation of a central credit register (hereinafter, the 'credit register') and an electronic information exchange system (hereinafter, the 'information exchange system') by Banka Slovenije. The credit register will be a centralised collection of data concerning credit transactions with natural persons and business entities and concerning credit risks and other exposures in relation to business entities. The information exchange system, which is to form part of the credit register, constitutes an electronic system for the exchange of data and information relating to the indebtedness of business entities and natural persons.

1.2. The aims of the draft law are: (1) to facilitate the implementation of Banka Slovenije's measures in the fields of monetary policy, macro-prudential supervision and ensuring financial stability; (2) to enable the effective management of credit risk; and (3) to renew the national reporting framework on credit and credit risk to ensure compliance with the framework laid down in Regulation (EU) 2016/867 of the European Central Bank (ECB/2016/13)[2].

1.3. The management of the credit register by Banka Slovenije will include: (1) the standardised collection of data and information on credit transactions and other exposures; (2) the processing,

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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 Regulation (EU) 2016/867 of the European Central Bank of 18 May 2016 on the collection of granular credit and credit risk data (ECB/2016/13) (OJ L 144, 1.6.2016, p. 44).

storage, analysis and dissemination of data for purposes of statistical research[3] and in connection with other tasks and objectives of Banka Slovenije; and (3) ensuring the existence of a set of data relating to the indebtedness of business entities and natural persons in the information exchange system.

1.4. Under the draft law, Banka Slovenije will collect the data on credit and credit risk of business entities for the credit register from reporting units on the basis of standardised reporting. The data on the indebtedness of natural persons will be collected exclusively from the reporting units, which will at the same time also be members of the information exchange system. The draft law requires reporting units to report to Banka Slovenije data for the credit register on the first reference date for reporting. It also sets out rules on the scope of the collection and processing of data of natural persons and the applicable retention periods in respect of such data. Personal information contained in the credit register is to be processed in accordance with the requirements set out in the draft law and the Law on protection of personal data[4].

1.5. The draft law authorises Banka Slovenije to adopt implementing legislation on the scope, content and methods of collecting, processing, disseminating and transmitting the data and information of business entities to be held in the credit register.

1.6. The draft law also regulates the protection of the confidentiality of data in the credit register, as well as permissible uses and transmission of such data.

1.7. The draft law explicitly states that the credit register is to be established in order to facilitate statistical research that is to be carried out by Banka Slovenije, based on the Law on Banka Slovenije and Article 5 of the Statute of the ESCB. This research is to be conducted to support the carrying out of Banka Slovenije's tasks, in particular in the fields of: (1) the conduct of monetary policy; (2) ensuring financial stability; and (3) macro-prudential supervision and risk management. The draft law further provides that Banka Slovenije shall also process the data collected in the credit register for the purposes of carrying out its supervisory tasks in accordance with the Law on banking[5] and Regulation (EU) No 575/2013 of the European Parliament and of the Council[6], as well as for the supervision of other entities in accordance with other laws. Furthermore, the draft law provides that Banka Slovenije may, for the abovementioned purposes, link the part of the credit register's database that relates to the data of business entities to other databases managed by Banka Slovenije, as well as to databases established and managed by the ECB for the purposes of carrying out the ECB's tasks in accordance with the Statute of the ESCB and Council Regulation (EC) 2533/98[7].

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3 The legal bases for the statistical research carried out by Banka Slovenije are Article 13 of the Law on Banka Slovenije (Zakon o Banki Slovenije) (ZBS-1) (Ur. l. RS No 72/06 – official consolidated text, and 59/11) and Article 5 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB').

4 Zakon o varstvu osebnih podatkov (ZVOP-1) (Ur. l. RS No 94/07 – official consolidated text).

5 Zakon o bančništvu (ZBan-2) (Ur. l. RS No 25/15 and 44/16 ZRPPB).

6 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

7 Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8).

1.8. The information exchange system is to be set up as a part of the credit register that enables its members to access individualised data on the credit risks of natural persons and business entities. Its purpose is to facilitate the efficient assessment of credit risk, both in terms of the initial decision to grant credit and in terms of the ongoing assessment of existing exposures, and to promote policies and measures for responsible lending and sustainable indebtedness of natural persons and business entities. The management of the information exchange system includes the integration of data and information on business entities and natural persons from the credit register into the information exchange system and the centralised processing of data and information, which includes printouts of individualised data. The draft law specifies which members are reporting units that must mandatorily be included in the information exchange system and establishes retention periods for the data in the information exchange system. It also delineates the scope of the data to be contained in the information exchange system, with respect both to natural persons and business entities. The draft law regulates access to data in the information exchange system by its members, who must fulfil technical and security requirements to be determined by Banka Slovenije in implementing legislation. The draft law also lays down the rules on the protection of the confidentiality of information by members of the information exchange system. The draft law governs the right of the natural persons to be informed about their personal data in the information exchange system, in accordance with the Law on protection of personal data. Furthermore, the draft law establishes the right of business entities to be informed of the processing of data in the information exchange system.

1.9. The draft law provides that Banka Slovenije will carry out supervision of reporting units in order to ensure the fulfilment of their obligation to report the data to the credit register. In order to obtain information about and perform due diligence on a reporting unit, Banka Slovenije will carry out supervision on the basis of the Law on banking.

1.10. The draft law provides that reporting units will report data and information for the credit register to Banka Slovenije free of charge. The members of the information exchange system will pay a fee to be established by Banka Slovenije in the implementing legislation, which will cover both membership of the system and access to the information contained in it. The fee to be paid by business entities in order to receive information concerning the data held about them in the information exchange system is to be established in Banka Slovenije's implementing legislation; whereas the fee to be paid by natural persons will be in accordance with the relevant provisions of the Law on protection of personal data.

2. Scope of the opinion

This opinion focuses on: (1) specific aspects of the operation and management of the credit register and the information exchange system by Banka Slovenije (Section 3.1); and (2) the new tasks conferred on Banka Slovenije in relation to the prohibition of monetary financing under Article 123 of the Treaty (Section 3.2).

3. Observations

3.1 Operation and management of the credit register and the information exchange system by Banka Slovenije

3.1.1 The ECB welcomes the draft law. The explanatory memorandum states that the draft law aims to renew the existing national reporting framework in order to fulfil new reporting requirements in the context of the AnaCredit project. As specified in Recital 12 of Regulation (EU) 2016/867 (ECB/2016/13), the first stage of reporting under AnaCredit includes credit granted by credit institutions to legal entities. In subsequent stages the scope of reporting may be extended to collect data on instruments granted by financial intermediaries other than credit institutions, and on instruments granted to natural persons. In this context, the ECB also welcomes that the scope of the draft law is broader than the current scope of Regulation (EU) 2016/867 (ECB/2016/13) as it already covers information which may be covered in subsequent amendments to Regulation (EU) 2016/867 (ECB/2016/13), such as collection of credit and credit risk data in respect of natural persons. In addition, the ECB notes that the draft law not only enables the collection of such data in respect of natural persons, but also ensures the protection of their rights.

3.1.2 As noted in paragraph 1.5, Banka Slovenije shall through secondary implementing legislation prescribe the scope and content of data of business entities. For this purpose, the ECB suggests that the Banka Slovenije ensures at each point in time that the data model defined in such implementing legislation corresponds to the data model valid at that point in time under Regulation (EU) 2016/867 (ECB/2016/13) in order for reporting requirements and implementation practices across the Eurosystem to remain sufficiently harmonised[8]. Nevertheless, the ECB notes that further developments of the AnaCredit project, for instance by means of requiring additional data attributes to be collected, may lead to the need to amend the draft law in the future should Banka Slovenije's power to adopt secondary implementing legislation prove insufficient for the purpose of incorporating such further developments.

3.1.3 The ECB understands that the draft law allows Banka Slovenije to link the part of the credit register's database that relates to the data of business entities to databases established and managed by the ECB for the purposes of carrying out the ECB's tasks, including for monetary policy, financial stability, macro-prudential supervisory, micro-prudential supervisory, risk management and statistical purposes. The ECB welcomes these provisions of the draft law, and notes that not only the financial markets in general, but also the Eurosystem, which uses credit risk assessment in its collateral framework for monetary policy operations, may benefit from a more informed evaluation of credit risk[9]. For reasons of legal certainty and to promote the efficient supervision of significant credit institutions the ECB suggests that the draft law could usefully reinforce these provisions by including, for the avoidance of doubt, an explicit clarification that the

8 See paragraph 2.3 of Opinion CON/2015/20 and paragraphs 2.4 and 2.5 of Opinion CON/2013/93. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

9 See paragraph 2.1 of Opinion CON/2014/57.

information in the credit register may be accessed by the ECB in order for it to carry out its supervisory tasks under Regulation (EU) 1024/2013[10].

3.1.4 The ECB welcomes that the draft law enables Banka Slovenije, as the sole operator of the information exchange system, to make special agreements on linking the information exchange system with comparable databases established in Member States. The ECB also welcomes that Banka Slovenije can also conclude agreements with operators of information exchange systems for assessing the creditworthiness of customers in third countries, if reciprocity is guaranteed.

3.1.5 The ECB welcomes that the system of electronic exchange will enable its members to develop more informed assessments of credit risk and enhance their risk management capabilities. The ECB understands that the confidentiality and protection of the data is fully guaranteed by the relevant provisions of the draft law.

3.2 Conferral of new tasks on Banka Slovenije

3.2.1 The draft law broadens Banka Slovenije's current responsibilities relating to the collection of statistical data by assigning to Banka Slovenije new tasks in connection with the establishment and operation of a credit register as a centralised collection of granular credit and credit risk data. In addition, the draft law also establishes an information exchange system which enables its members to access granular credit and credit risk data on business entities. It also confers on Banka Slovenije supervisory tasks in relation to the reporting of the data and information included in the credit register.

While it is acknowledged that the attribution of these new tasks is mainly driven by the aim to ensure compliance with Regulation (EU) 2016/867 (ECB/2016/13), these new tasks are indeed part of a thorough revamping of the national framework for the reporting of risks whose management is entrusted to Banka Slovenije, which triggers the need to perform the assessment outlined below.

3.2.2 The ECB wishes to reiterate that when new tasks are conferred on a member of the European System of Central Banks (ESCB), it is necessary to assess such conferral against the prohibition of monetary financing under Article 123 of the Treaty.

For this purpose, the ECB has developed guidance, in the form of general and specific considerations as set out in paragraphs 3.2.3 and 3.2.4, on the basis of which the ECB may decide whether the new task conferred on an ESCB national central bank (NCB) is to be considered a central banking task or a governmental task for the purposes of the monetary financing prohibition[11]. The concrete assessment of whether Banka Slovenije's tasks as the authority responsible for establishment and operation of the credit register are to be considered central banking tasks or governmental tasks is undertaken in paragraph 3.2.5 of this opinion.

3.2.3 First, the systematic categorisation of tasks assigned to NCBs as central banking or government tasks applies to genuinely new tasks that did not exist in the past or did not form an integral part of the central banking tasks already assigned to the NCB in the past. In recognition of the Member States' legal frameworks, central banking traditions and national set-ups, the tasks currently

10 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).

11 See Opinion CON/2016/38.

discharged by an NCB as central banking tasks are not reviewed and re-categorised, but may be reassessed if their substance is amended.

Second, the principle of financial independence requires that the Member States may not put their NCBs in a position where they have insufficient financial resources to carry out their ESCB- or Eurosystem-related tasks.

Third, central banking tasks comprise in particular those tasks that are related to the tasks listed in Article 127(2), (5) and (6) of the Treaty.

Fourth, new tasks conferred on an NCB that are atypical of NCBs' tasks, or which are clearly discharged on behalf of and in the exclusive interest of the government or of other public entities, should be considered as governmental tasks.

3.2.4 An important criterion for qualifying a new task as a government tasks is the impact of the task on an NCB's institutional, financial and personal independence. In particular, the following should be taken into account.

First, it should be assessed whether the performance of the new task will create inadequately addressed conflicts of interests with existing central banking tasks, without necessarily complementing the existing central banking tasks. If a conflict of interest arises between existing and new tasks, there should be sufficient mitigation measures in place to adequately address that conflict. Complementarity between the new task and existing central banking tasks should not, however, be interpreted broadly, as this could lead to the creation of an indefinite chain of ancillary tasks. The assessment of the complementarity of a new task should also take into account the financing of that task.

Second, it should be assessed whether, without new financial resources, the performance of the new task places a disproportionate burden on the financial or organisational capacity of the NCB concerned, and may negatively impact its capacity to properly perform existing central banking tasks.

Third, it should be assessed whether the performance of the new task is aligned with the institutional set-up of the NCB, in particular as regards central bank independence and accountability considerations.

Fourth, it should be assessed whether the performance of the new task entails substantial financial risks.

Fifth, it should be assessed whether the performance of the new task expose the members of the NCB's decision-making bodies to political risks which are disproportionate and may also impact on their personal independence and, in particular, the guarantee of the term of office under Article 14.2 of the Statute of the ESCB.

Any final assessment on the qualification of a task given to an NCB as either falling within the scope of central banking tasks or government tasks should be guided by the objective of ensuring that the prohibition of monetary financing within the Eurosystem and the ESCB is consistently applied, to the extent that it applies to its members.

3.2.5 In the light of the above guidance the following paragraphs assess whether Banka Slovenije's new tasks are in line with the monetary financing prohibition.

3.2.5.1 Principle of financial independence

The principle of financial independence requires NCBs to have sufficient means to carry out not only their ESCB-related tasks but also their national tasks[12]. In this respect, it is noted that Banka Slovenije shall prescribe a fee in the implementing legislation to members of the information exchange system for membership and access to the data. It shall also prescribe a fee to business entities regarding their right to be informed.

3.2.5.2 Links to tasks listed in Article 127(2) and (5) of the Treaty

With regard to the credit register, it is noted that granular credit data based on central credit registers are necessary for the development and production of new ESCB statistics, as well as for increasing the quality of ESCB statistics. These new or improved statistics to be produced in the long term are necessary for the performance of Eurosystem tasks including monetary policy analysis and monetary policy operations, risk management, financial stability surveillance and research, as well as the Eurosystem's contribution to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system[13]. These data will also be useful for banking supervision purposes in the context of the Single Supervisory Mechanism[14]. In addition, as regards the information exchange system, it is noted that NCBs should be able to use the multi-purpose shared analytical granular credit data set to establish feedback loops with reporting agents or to enrich existing feedback loops and other information services from central credit registers to reporting agents. These feedback loops will enhance the ESCB's contribution to the stability of the financial system in line with its statutory mandate according to Article 127(5) of the Treaty[15].

The set-up and management of the credit register, including the information exchange system, are thus considered as tasks related to those referred to in the first indent of Article 127(2) and Article 127(5) of the Treaty. The new tasks are also complementary to Banka Slovenije's existing macro- and micro-prudential supervisory tasks.

3.2.5.3 Atypical tasks

Central banks have always had a strong interest in ensuring higher statistical data quality for analytical purposes. A number of Member States have established central credit registers and conferred the tasks involved in operating them upon NCBs[16]. Moreover, in the long run all Eurosystem NCBs are required to operate national granular credit datasets under Decision ECB/2014/6 and Regulation (EU) 2016/867 (ECB/2016/13)[17]. The ECB's powers in relation to the collection of statistical information are set out in Article 5 of the Statute of the ESCB, and Article 4 of Council Regulation (EC) No 2533/98 requires all Member States to organise themselves in the field of statistics and fully cooperate with the ESCB in order to ensure the fulfilment of obligations

12 See the ECB's 2016 Convergence Report, p. 25.

13 See recital 3 of Decision ECB/2014/6 of 24 February 2014 on the organisation of preparatory measures for the collection of granular credit data by the European System of Central Banks (OJ L 104, 8.4.2014, p. 72).

14 See recital 1 of Regulation (EU) 2016/867 (ECB/2016/13).

15 See recital 18 of Regulation (EU) 2016/867 (ECB/2016/13).

16 See, for example, Opinions CON/2015/20, CON/2014/57 and CON/2013/93.

17 Regulation (EU) 2016/867 (ECB/2016/13) shall apply from 31 December 2017.

arising out of Article 5 of the Statute of the ESCB. The extension of Banka Slovenije's powers in the field of statistics is therefore not regarded as atypical of a central bank.

3.2.5.4 Discharge of tasks on behalf of and in the exclusive interest of the Government or of other public entities

Banka Slovenije is designated by the draft law as the sole operator of the credit register. Banka Slovenije shall exchange information with the members of the information exchange system in order to better manage credit risks. There is no indication that, in carrying out its tasks, Banka Slovenije would act exclusively in the interest of another public entity.

3.2.5.5 Extent to which the performance of tasks is aligned with Banka Slovenije's institutional set-up, in particular as regards accountability considerations

Given the complementarity with Banka Slovenije's existing tasks, the new tasks appear to fit into Banka Slovenije's current institutional set-up. In this respect, it is noted that the draft law stipulates that it does not interfere with the competence of Banka Slovenije regarding the collection and processing of data for supervisory purposes in accordance with the Law on banking.

3.2.5.6 Extent to which the performance of tasks is proportionate to Banka Slovenije's financial and operational capacity and its ability to perform its ESCB-related tasks

The ECB understands that Banka Slovenije has already taken the necessary measures to ensure that sufficient resources are available for the performance of the extended collection of statistical data. In addition, it is noted that certain costs related to Banka Slovenije's new tasks will be covered by the fees levied on the members of the information exchange system and business entities pursuant to the implementing legislation.

3.2.5.7 Extent to which the performance of tasks entails substantial financial risks

The draft law does not contain any specific provisions on liability for the operation of the credit register. Banka Slovenije's potential liability for the performance of the new tasks given to it under the draft law will be thus subject to the rules on liability for damage caused in the exercise of public authority[18].

3.2.5.8 Conclusion

The ECB considers that Banka Slovenije's new tasks relating to the credit register and the information exchange system qualify as central banking tasks for the purposes of assessing their compliance with the monetary financing prohibition, in the sense that they expand Banka Slovenije's statistical tasks and are linked to and complement Banka Slovenije's existing monetary

18 Article 26 of the Slovenian Constitution in conjunction with the Code of Obligations (Obligacijski zakonik) (OZ) (Ur. l. RS No 97/07 – official consolidated text).

policy, micro- and macro-prudential supervisory as well as financial stability tasks.

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

Done at Frankfurt am Main, 31 August 2016.

[signed]

The President of the ECB

Mario DRAGHI