EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 9 September 2011

on authorisation to act on the supervisory boards of banks

(CON/2011/70)

Introduction and legal basis

On 22 August 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 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 contains 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 Ministry requested the ECB's opinion on the provisions of the draft law introducing in the Law on banking (hereinafter the 'Law') the need to obtain authorisation to act as member of a bank's supervisory board (hereinafter the 'authorisation')[2]. Banka Slovenije grants the authorisation if the candidate has been duly appointed by the bank's general assembly and meets the conditions under the Law, namely: (i) appropriate professional qualifications and the characteristics and experience necessary to supervise the management of the bank's operations (i.e. at least five years of experience in managing or supervising the operations of a company of comparable size and activities), and (ii) not having been convicted, by a final judgment, of certain criminal offences. If the candidate does not meet the conditions mentioned above or the available information shows that the bank's operations could be jeopardised, pursuant to risk management rules, due to activities and operations carried out by the candidate or due to past actions, Banka Slovenije rejects the

1 OJ L 189, 3.7.1998, p. 42.

2 The provisions relating to the authorisation are the following: Article 5 amending Article 72(3) of the Law, Article 6 inserting a new Article 72.a in the Law, Article 37 amending Article 396(2) of the Law and Article 38 in the transitional and final provisions chapter of the draft law.

application. The authorisation is bound to the supervisory board member's function at a particular bank and ceases to be valid following expiry of the term of office to which it relates. The supervisory board member must inform Banka Slovenije within five business days that their term of office has expired and Banka Slovenije issues a decision declaring that the authorisation ceased to be valid on that basis. According to the transitional provisions of the draft law, members of a bank's supervisory board carrying out their function on the basis of decisions valid before the entry into force of the draft law must obtain authorisation within 24 months from the entry into force of the draft law.

1.2 Most of the draft law provisions are intended to transpose Directive 2010/76/EU[3] and Directive 2010/78/EU[4] into Slovenian law. In accordance with Article 1(2) of Decision 98/415/EC, the ECB does not provide its opinion on draft legislative provisions the exclusive purpose of which is the transposition of Union directives into the law of Member States.

1.3 Finally, the draft law makes mainly editorial changes to the provisions of the Law governing the Slovenian deposit guarantee scheme.

2. The competence of Banka Slovenije

2.1 The ECB welcomes the provisions of the draft law introducing an authorisation to act as member of a bank's supervisory board. It could contribute to efficient supervision of banks' operational management. Within its role as Slovenian banking supervisor, Banka Slovenije is well placed to grant the authorisation, as it already does in the case of the authorisation to act as member of a bank's management board.

2.2 The ECB expects that any legislative provisions giving new competences to Banka Slovenije are agreed by Banka Slovenije.

3. Central bank independence

3.1 As granting the authorisation would be a new task entrusted to Banka Slovenije, it would have to commit additional human and financial resources to carry out this task. In this context, the ECB has emphasised that 'Member States may not put their [national central banks] in a position where they have insufficient financial resources to carry out their ESCB or Eurosystem related tasks, as applicable'[5]. The ECB has consistently expressed its concern that, when allocating additional tasks

3 Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies (OJ L 329, 14.12.2010, p. 3).

4 Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (OJ L 331, 15.12.2010, p. 120).

5 See e.g. the ECB's Convergence Report May 2010, p. 21, available on the ECB's website at www.ecb.europa.eu.

to national central banks, it must be ensured that they have sufficient human and financial resources, both in terms of quantity and quality, for all of their tasks, and in particular that their capacity to fulfil their ESCB or Eurosystem-related tasks is not affected[6].

3.2 Such considerations are of particular importance from the perspective of the initial additional work stemming from the requirement for members already appointed to banks' supervisory boards to obtain authorisation within 24 months from entry into force of the draft law. Consequently, Banka Slovenije would have to process these applications at the same time as applications by members appointed to banks' supervisory boards following entry into force of the draft law.

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

Done at Frankfurt am Main, 9 September 2011.

[signed]

The President of the ECB

Jean-Claude TRICHET

6 In the context of consultations by Slovenian authorities, see e.g. paragraph 2.3 of Opinion CON/2007/38 and paragraph 3.5 of Opinion CON/2011/25.