EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 19 August 2013

on the provision of payment services by Banka Slovenije for budget users

(CON/2013/62)

Introduction and legal basis

On 5 July 2013, 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 the provision of payment services to budget users (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 Law on the provision of payment services to budget users[2] (hereinafter the 'Law') governs the tasks and organisation of the Public Payments Administration of the Republic of Slovenia (hereinafter the 'PPA') and the provision of payment services to 'budget users'[3].

1.2 Within this framework, the Law regulates certain aspects of the functioning of the single treasury account system as one of the characteristics of the public finance system in Slovenia. There is one single treasury account system for the State and one for each municipality, and each system has an account with Banka Slovenije[4]. In order to carry out and record public finance monetary flows and to provide payment services to budget users, the PPA maintains several types of sub-accounts within each single State and municipal treasury account system[5]. In addition, the Law provides that budget users may open special-purpose transaction accounts with Banka Slovenije for the separate

1 OJ L 189, 3.7.1998, p. 42.

2 *Zakon o opravljanju plačilnih storitev za proračunske uporabnike (ZOPSPU)* (Ur.l. RS No 59/2010).

3 'Budget users' include the State, municipal authorities, administrations and organisations, public funds, institutes and agencies established by the State or a municipality. See Article 1 of the Law in connection with Article 3 of the Law on public finance (*Zakon o javnih financah* (ZJF)) (Ur.l. RS No 11/2011, as amended).

4 See Article 61 of the Law on public finance.

5 The PPA maintains (a) treasury sub-accounts of the State and of municipalities, intended for the management of funds of each single treasury account system; (b) sub-accounts to which fiscal revenues are paid in; (c) sub-accounts maintained for the provision of payment services to budget users, (d) other types of accounts provided for by laws and other regulations. See Article 22(1) of the Law.

management of funds allocated to a specific programme or project. For cash withdrawals and cash lodgements, budget users may open special zero balance accounts with commercial banks. Budget users may not open accounts with other payment service providers outside the single treasury account system, unless explicitly provided for by the Law or other laws and regulations[6]. The PPA collects and distributes all relevant information on payments to and from the abovementioned accounts, maintains a register of budget users and performs other tasks assigned by law[7]. Further detailed rules regarding the PPA and its tasks are laid down in other laws and regulations. Pursuant to the explanatory memorandum to the draft law, the existing arrangements have been effective for managing budget liquidity and establishing a comprehensive system for, *inter alia*, processing relevant data for budget, tax, statistical, analytical and other purposes, as well as supervising monetary flow to and from the budget.

1.3 The Law is now being amended to: (a) incorporate new services and tasks entrusted to the PPA[8]; (b) define urgent tasks of the PPA which shall be performed during a strike[9]; (c) lay down further requirements with respect to maintaining the budget users register[10]; (d) provide for the mandatory use of electronic invoices in public administration[11]; (e) further specify certain rules regarding the accounts of budget users and how payment services are provided to them[12]; (f) align the sanctions regime with other amendments to the Law[13].

2. General observations

In the single treasury account system, Banka Slovenije acts as a payment services provider to budget users. It also maintains special-purpose transaction accounts for them. The provision of such services is in line with Article 21.2 of the Statute of the European System of Central Banks and of the European Central Bank, which provides that the ECB and national central banks (NCBs) may act as fiscal agents for Union institutions, bodies, offices or agencies, central governments, regional local or other public authorities, other bodies governed by public law, or public undertakings of Member States. This is reflected in Article 12 of the Law on Banka Slovenije[14], pursuant to which Banka Slovenije may act as a payment and/or fiscal agent for the State and maintains accounts for the Republic of Slovenia, State bodies and public entities.

The ECB was previously consulted on the Law and issued Opinion CON/2010/55[15]. With regard to the relevant provisions of the Law which (a) require Banka Slovenije to provide to the PPA information on

6 See Article 25 of the Law.
7 See Article 4 of the Law.
8 See amended Articles 4(1)(16) and 4(1)(7) of the Law and new Article 26.a and new Article 6(2) of the Law.
9 See new Article 4.a of the Law.
10 See amendments to Articles 10 to 18 of the Law.
11 See amended Article 26 of the Law.
12 See amended Articles 22 to 25 of the Law.
13 See amended Articles 31 and 32 of the Law.
14 Zakon o Banki Slovenije (ZBS-1) (Ur.l. RS No 72/2006, as amended).
15 All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

payments debited and credited to accounts opened with Banka Slovenije and on account balances free of charge, and (b) authorise the Minister of Finance to independently prescribe the method and deadlines for such provision of information, the ECB drew attention to the principle of central bank independence and the right of Banka Slovenije to charge appropriate fees for opening these accounts pursuant to Article 53 of the Law on Banka Slovenije[16]. The ECB welcomes that the draft law takes into account the ECB's observations in this respect. Amended Article 22(6)[17] explicitly provides that the Ministry of Finance and Banka Slovenije will agree, in a contract or another legal act, the manner in which the PPA and Banka Slovenije exchange information with respect to the maintenance of treasury single accounts and special-purpose transaction accounts and the provision of payment services through these accounts. This separate agreement will need to ensure that the financial independence of Banka Slovenije is safeguarded. The ECB also welcomes that the sanctions regime in amended Article 31 of the Law does not apply to Banka Slovenije.

3. Specific observations

Pursuant to the draft law, Article 22(7) of the Law provides that the Minister of Finance shall prescribe, *inter alia*, the procedures and methods for maintaining the accounts of budget users, the obligatory content of instructions for the payment of fiscal revenues as well as rules on the provision of other information in connection with the relevant payment transactions. In Opinion CON/2010/55, the ECB noted that it is not clear whether these rules would also apply to the accounts maintained by Banka Slovenije or otherwise impose additional obligations on the latter and that it would be unusual for the Minister of Finance, as a customer, to define the terms and conditions for the accounts and services provided by Banka Slovenije. In this connection it was also highlighted that provision by central banks of fiscal agency services should comply with the monetary financing prohibition laid down in Article 123 of the Treaty by not constituting central bank financing of public sector obligations in regard to third parties or central bank crediting of the public. Any remuneration of the account held by the budget users with Banka Slovenije should thus reflect market parameters[18]. In particular, it is important to correlate the remuneration rate of the deposits with their maturity. As noted in past ECB opinions[19], the prohibition on monetary financing by central banks of government activities is independent of its form, i.e. loans or other direct financial means[20] are covered by the prohibition. Interest payments above market rates constitute a *de facto* advance distribution of profits. This, in turn, implies a *de facto* provision of intra-year credit, contrary to the objective of the monetary financing prohibition. Therefore, the remuneration of deposits of public entities should not go beyond the remuneration applied to a similar deposit made by market counterparties. If the remuneration mechanism for deposits of public entities allows the Government to systematically steer the remuneration by a NCB at a rate above the rate at which a similar

16 See paragraphs 3.1.1 and 3.1.2 of Opinion CON/2010/55 in connection with Article 22(3) and third indent of Article 22(5) of the Law.

17 See also the third indent of amended Article 22(7) of the Law.

18 See paragraphs 3.2.1 and 3.2.2 of Opinion CON/2010/55.

19 See, in particular, Opinions CON/2008/10 and CON/2009/69.

20 E.g. the provision of direct, non-reimbursable funding to the public sector.

deposit would be remunerated by market counterparties, this would contravene the objectives of the monetary financing prohibition under the Treaty.

While the amendments to the Law do not seem to reflect these observations, which remain valid with regard to the draft law, the explanatory memorandum to the draft law states that the amendments take into account Banka Slovenije's independence and observations from Opinion CON/2010/55. Pursuant to the explanatory memorandum, all of Banka Slovenije's rights and obligations with respect to: (a) maintaining single treasury accounts for the State and municipalities and special-purpose transaction accounts, and (b) providing payment services through these accounts, may be regulated with a contract or another legal act between the Ministry of Finance and Banka Slovenije. In line with its previous observations in Opinion CON/2010/55, the ECB advises the Slovenian authorities to appropriately incorporate this explanation from the explanatory memorandum into the draft law.

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

Done at Frankfurt am Main, 19 August 2013.

[signed]

The Vice-President of the ECB
Vítor CONSTÂNCIO