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EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 12 June 2006

at the request of the Slovenian Ministry of Finance
on a draft law on the introduction of the euro

(CON/2006/29)

Introduction and legal basis

On 12 May 2006 the European Central Bank (ECB) received a request from the Slovenian Ministry of Finance for an opinion on a draft law on the introduction of the euro (hereinafter the 'draft law').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and on the first and second 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 currency matters and means of payment. 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

The main objectives of the draft law are to facilitate the euro changeover and to address the issues relating to the introduction of the euro that are not contained in the relevant Community legislation, i.e. Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro[2], Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro[3] and Council Regulation (EC) No 2866/98 of 31 December 1998 on the conversion rates between the euro and the currencies of the Member States adopting the euro[4].

2. General observations

2.1. The ECB welcomes the draft law as it contains a comprehensive set of provisions for the introduction of the euro, which should greatly facilitate a smooth changeover to the euro in

1 OJ L 189, 3.7.1998, p. 42.

2 OJ L 162, 19.6.1997, p. 1. Regulation as amended by Regulation (EC) No 2595/2000 (OJ L 300, 29.11.2000, p. 1).

3 OJ L 139, 11.5.1998, p. 1. Regulation as last amended by Regulation (EC) No 2169/2005 (OJ L 346, 29.12.2005, p. 1).

4 OJ L 359, 31.12.1998, p. 1. Regulation as amended by Regulation (EC) No 1478/2000 (OJ L 167, 7.7.2000, p. 1).

Slovenia. The Slovenian Government's initiative of preparing early for the introduction of the euro should ensure the timely implementation of the necessary measures.

2.2. *Name of the single currency*

The draft law that was submitted to the ECB for consultation uses the correct spelling[5] of the name of the single currency in the nominative singular case and is therefore compatible with Community law in this respect[6]. Moreover, in the course of the consultation procedure, the consulting authority informed the ECB that a new provision would be inserted in the draft law providing that as from the day of entry into force of the draft law the word 'evro' in all grammatical cases will be replaced with the word 'euro' in the relevant case in laws and regulations. The ECB welcomes this new provision, as it will satisfactorily solve the spelling issue in Slovenia.

2.3. *Timing for adoption of the draft law and preconditions for its entry into force*

According to Article 28, the draft law 'shall enter into force on the fifteenth day after its publication and shall take effect from the day following the publication of the Council decision on abrogation of the derogation pursuant to Article 122(2) of the Treaty'. It should be recalled that the Community has exclusive competence in matters relating to economic and monetary union, and national legislation should not in any way prejudge the EU Council's decision regarding abrogation of the derogation and the date on which this abrogation takes effect. Certain provisions of the draft law containing specific dates (e.g. Article 11(3), potentially Article 16 and indirectly Article 8(2)) presuppose that Slovenia will adopt the euro on 1 January 2007. However, in practice this should not cause any problems as the consulting authority has informed the ECB that the draft law will be submitted to the Slovenian Parliament after abrogation of the derogation.

2.4. *Direct applicability of Community regulations*

Certain provisions of the draft law repeat the relevant provisions of Regulation (EC) No 974/98[7]. In this context, the ECB notes that Article 249 of the Treaty provides that a Community regulation 'shall be binding in its entirety and directly applicable in all Member States'. A Community regulation therefore does not need to be transposed into the domestic law of Member States[8]. If a Member State transposes a regulation into national law, the fact that the provision is a Community law provision may be obscured. In addition, if a Member State transposes a regulation in even a

5 The ECB understands that the spelling mistakes in Articles 21(2) and 22(1) of the draft law will be corrected.

6 See: ECB Opinion CON/2005/57 of 16 December 2005 at the request of the Slovene Ministry of Economic Affairs on the provisions of the draft Companies Act concerning redenomination resulting from the introduction of the euro; ECB Opinion CON/2006/17 of 13 March 2006 at the request of the Slovenian Ministry of Finance on a draft law amending the Law on Banka Slovenije; and the ECB's Convergence Report of May 2006, Chapter II, Section 5 and Subsection 7.2.

7 Article 3 of the draft law repeats Article 2 of Regulation (EC) No 974/98; Article 9(1), Article 11(1) and (2), and Article 13(1) of the draft law repeat Article 14 of Regulation (EC) No 974/98.

8 As stated by the Court of Justice of the European Communities in Case 34-73 *Fratelli Variola S.p.A.* v *Amministrazione italiana delle Finanze* [1973] ECR 981: 'by virtue of the obligations arising from the Treaty and assumed on ratification, Member States are under a duty not to obstruct the direct applicability inherent in regulations and other rules of Community law. Strict compliance with this obligation is an indispensable condition of simultaneous and uniform application of Community regulations throughout the Community'. This position was reiterated in Case 50-76 *Amsterdam Bulb BV* v *Produktschap voor Siergewassen* [1977] ECR 137.

slightly different form, there is a risk that its content will be altered[9]. In light of the above, the ECB would recommend deleting those articles of the draft law which repeat provisions of Regulation (EC) No 974/98 or, alternatively, amending those articles to refer merely to the relevant provisions of Regulation (EC) No 974/98.

3. Definitions

3.1. *Conversion rate*

The definition of 'convergence rate' in Article 2 of the draft law refers to the Treaty establishing the European Community published in the Official Gazette of the Republic of Slovenia. This definition should be amended to refer to the Official Journal of the European Union as only the text of the Treaty published there is deemed to be authentic.

3.2. *Day of the introduction of the euro*

The definition of 'day of the introduction of the euro' in Article 2 of the draft law, which refers to Article 122(2) of the Treaty, does not comply fully with Community law. Article 122(2) of the Treaty is the legal basis for the EU Council's decision on abrogation of the derogation. Following this decision, and in accordance with Article 123(5) of the Treaty, the EU Council adopts the conversion rate between the euro and the currency of the relevant Member State and determines the date on which abrogation of the derogation will take effect. Therefore, the definition of 'day of the introduction of the euro' in Article 2 of the draft law should be amended by referring to it as the day on which the abrogation of Slovenia's derogation takes effect, as determined by the EU Council in accordance with Article 122(2) of the Treaty.

3.3. *Bottom-up method*

The bottom-up method is defined in Article 2 of the draft law as a 'debt-redenomination method, whereby the value of each denomination of a debt security is redenominated', and this is partially repeated in the last sentence of Article 12(1) of the draft law. For reasons of legal clarity, the ECB would advise deleting the repetition in Article 12(1) and defining the method in detail[10] in Article 2 of the draft law, which contains the definitions.

4. Cash changeover

4.1. There appears to be a need to phrase Article 4(2) of the draft law more precisely. Currently, there seems to be a discrepancy between, on the one hand, the period of 14 days and, on the other hand,

9 For instance, Article 13(3) of the draft law clearly contradicts Article 14 of Regulation (EC) No 974/98 and should therefore be deleted.

10 See Commission Communication of 2 July 1997 on the impact of the introduction of the euro on capital markets (COM(97) 337 final).

the period beginning at 00.00 on the day of the introduction of the euro and ending at 24.00 on the fourteenth day after the day of the introduction of the euro, which would mean a total of 15 days.

4.2. Article 6(1) of the draft law provides that from the day of the introduction of the euro, Banka Slovenije 'shall start withdrawing tolar banknotes and coins from circulation'. From an operational point of view, the ECB would like to draw attention to the experience of past changeovers, where it proved very practical gradually to start withdrawing coins before the day of the introduction of the euro, to facilitate the logistics of this withdrawal (particularly given the bulk and weight of coins in circulation, the required special storage facilities, etc.).

4.3. In accordance with Article 6(2) of the draft law, Banka Slovenije 'may adopt an executive regulation laying down the procedures and methods for the cash changeover'. This provision should be amended to state explicitly that any Banka Slovenije decision in this respect must be in accordance with decisions taken by the ECB's decision-making bodies.Article 7 of the draft law read in conjunction with Article 24 of the draft law leaves some room for different interpretations in relation to the cash changeover in post offices. The draft law refers to three different entities in this respect: *Pošta Slovenije* (a state-owned company providing postal services in Slovenia), *Poštna banka Slovenije* (a bank partially owned by *Pošta Slovenije* for which the latter also acts as the contractual service provider) and post offices (local business units of *Pošta Slovenije*). The ECB would recommend clarifying whether 'post offices' in Article 24 refers to such local units of *Pošta Slovenije* or, if they do not have separate legal personality, whether any fines incurred would be imposed on *Pošta Slovenije*. Since *Pošta Slovenije* is only the contractual service provider for *Poštna banka Slovenije*, it may be appropriate that the latter be held responsible in the event of any infringement. However, if this is the case *Poštna banka Slovenije* is already included in the category of 'banks' under Article 24 of the draft law.

4.4. With respect to Article 8(2) of the draft law, the ECB would recommend specifying more clearly what the situation will be after 31 December 2016, i.e. Banka Slovenije will no longer exchange tolar coins and after that date any exchange claim against the Republic of Slovenia will be time-barred.

5. Account balances and payment transactions

5.1. For reasons of legal clarity, the ECB would recommend stating explicitly that 'payment transactions' in Article 10 of the draft law only refers to non-cash payments.

5.2. According to Article 12 of the draft law, debt securities of the state budget denominated in tolars and issued as book-entry securities in accordance with Slovenian law must be redenominated using the bottom-up method and the minister responsible for finance will prescribe the methods and procedures for redenominating individual types of such debt securities. The ECB would suggest amending this provision by explicitly stating that any such redenomination must comply with Community law.

5.3. According to Article 14(1) of the draft law, 'debtors shall be responsible for the accuracy of the conversion into euro of amounts denominated in tolars at the time of payment or when submitting a payment order', 'unless otherwise agreed by the parties or provided for in a regulation'. According to the explanatory memorandum accompanying the working version of the draft law which was made public at an earlier stage of the legislative process[11], the intention behind this provision was to make clear that it is the debtor (and not the bank acting as payment intermediary) who will be responsible for the accuracy of conversion from tolars into euro, in particular as regards money orders issued before 31 December 2006 (when tolars are the only legal tender) and falling due after the introduction of the euro. In order to avoid any misunderstanding in interpreting the scope of this provision, especially in the light of Commission Recommendation 98/287/EC of 23 April 1998 concerning dual display of prices and other monetary amounts[12], the ECB suggests that the draft law explicitly specifies that relations between retailers and consumers are exempted from Article 14(1).

6. Interest rates, indices and exchange rates

The ECB would recommend aligning Article 18 of the draft law with Article 67 of the Law on Banka Slovenije[13]. In respect of foreign currencies that are on the ECB's exchange-rate list, the exchange rates were previously determined by Banka Slovenije but will now only be published by Banka Slovenije (on the basis of the reference exchange rates of foreign currencies determined and published by the ECB). Banka Slovenije may, however, still determine and publish the reference exchange rates for foreign currencies that are not on the ECB's exchange-rate list.

7. Other provisions on rounding

7.1. Article 21(2) of the draft law provides for an exception to the rule of rounding to no less than two decimal places: for lower-value prices and for goods and services that are sold in bulk 'prices shall be rounded to no less than four decimal places'. Currently, there seems to be significant scope for different interpretations of when rounding to no less than four decimal places should be used, and the draft law only provides a few examples (such as prices for electricity units, telephone charges, etc.)[14]. For reasons of legal certainty, the draft law should contain more precise definitions of prices

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11 Available on the Slovenian Government website at www.gov.si.

12 OJ L 130, 1.5.1998, p. 26.

13 *Zakon o Banki Slovenije*, adopted on 19 June 2002 and last amended on 30 March 2006; published in the Official Gazette of the Republic of Slovenia, Nos 58/02, 85/02 and 39/06.
Article 67(1) of the Law on Banka Slovenije reads:
'From the day of the introduction of the euro as the currency of the Republic of Slovenia, Articles 21 and 22 of this act shall cease to apply. Notwithstanding the preceding sentence, the Bank of Slovenia shall publish an exchange rate list on the basis of reference exchange rates of foreign currencies determined and published by the European Central Bank. The Bank of Slovenia may also determine and publish exchange rates of foreign currencies that are not on the exchange rate list of the European Central Bank.'

14 For the interpretation of the Court of Justice of the European Communities of the euro rounding rules, see Case C-19/03 *Verbraucher-Zentrale Hamburg eV* v *O2 (Germany) GmbH & Co. OHG* [2004] ECR I-8183.

which ‘have lower values’ and of goods and services falling within the category of those ‘sold in bulk’. This is particularly important since the draft law[15] provides for sanctions for infringements of this provision.

7.2. Article 22(1) of the draft law provides that, where there is dual pricing in accordance with the Law on dual pricing in tolars and euro, ‘undertakings may indicate prices to the nearest EUR 0.05 or to the nearest multiple thereof’, where goods and services are sold via automatic vending machines or by similar selling methods and where, for technical reasons, it is not possible to make payments with an accuracy of EUR 0.01 and 0.02. The ECB understands that the rounding possibility set out in this provision: (i) refers to the actual price of the goods or services sold exclusively using the methods mentioned above; (ii) is due exclusively to the technical restrictions of the vending machines in question; and (iii) is in any event without prejudice to the rounding rules in Council Regulation (EC) No 1103/97.

8. Penal provisions

With respect to Article 25 of the draft law, the ECB would like to make the following editorial comment. It seems that there is a discrepancy between the penal provision in point 5 of Article 25(1) (referring to infringements of Article 21(2)) and the wording of Article 21(2), as well as between point 6 of Article 25(1) and the wording of the underlying provision (Article 21(5)). For reasons of legal clarity, the ECB would recommend aligning the wording of the penal provisions in points 5 and 6 of Article 25(1) of the draft law with their underlying provisions.

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

Done at Frankfurt am Main, 12 June 2006.

[signed]

The President of the ECB

Jean-Claude TRICHET

15 Point 5 of Article 25(1) of the draft law.