EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

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

(CON/2005/57)

1. On 22 November 2005 the European Central Bank (ECB) received a request from the Slovene Ministry of Economic Affairs for an opinion on the provisions of the draft Companies Act concerning redenomination resulting from the introduction of the euro (hereinafter the 'draft law').

2. The ECB's competence to deliver an opinion is based on the first 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 contains provisions concerning currency matters and the stability of equity 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.

3. The draft law is the first Slovene legal act addressing the euro changeover on which the ECB has been consulted. Its objective is to lay down simplified rules in relation to the redenomination into euro of the capital of public limited companies and limited liability companies. The ECB understands the draft law to be a first phase in the process of preparing the Slovene legal system for the introduction of the euro. It assumes that the draft law will be supplemented by additional legislation, in particular the law governing the introduction of the euro referred to in the draft law's transitional and final provisions.

4. The ECB welcomes the Slovene Government's initiative to start preparing early for the introduction of the euro, to ensure the timely implementation of the measures necessary for the transition.

5. However, regarding the name of the single currency, the ECB notes that the Slovene language version of the draft law refers to the 'evro' in the nominative singular case as opposed to the 'euro'. The ECB would like to remind the Slovene authorities that Article 2 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro[2] stipulates that '… the currency of the

1 OJ L 189, 3.7.1998, p. 42.

2 OJ L 139, 11.5.98, p. 1. Regulation as amended by Regulation (EC) No 2596/2000 (OJ L 300, 29.11.2000, p. 2).

participating Member States shall be the euro'[3]. Recital 2 to this Regulation notes that, at its meeting in Madrid on 15 and 16 December 1995, the European Council considered that '… the name of the single currency must be the same in all the official languages of the European Union, taking into account the existence of different alphabets'. Taken together, these two provisions make it clear that the name of the single currency is the 'euro' and that this name should be identical in all legal acts published in Community languages. Furthermore, the ECB would like to note that new Member States are under an unquestionable legal obligation to comply with decisions taken by the European Council, pursuant to Article 5(3) of the Act concerning the conditions of accession[4]. Thus, the conclusions of the Madrid European Council with regard to the name of the single currency are binding on the new Member States. The Community, as the exclusive holder of competence in monetary matters, determines alone the name of the single currency. As a single currency, the name of the euro needs to be identical in the nominative singular case in all Community languages to ensure that its singleness is apparent. On the basis of these legal considerations, and in view of the supremacy of Community law, the ECB is of the opinion that the name of the single currency in the nominative singular case is legally required to be consistently rendered in all national legal acts as the 'euro'[5].

6. Moreover, the reference in the draft law to '… conversion rate defined in the law governing the introduction of the euro'[6] is not appropriate since Community secondary law on monetary matters, including the conversion rates adopted in accordance with Article 123(5) of the Treaty establishing the European Community, are directly applicable in the Member States. The conversion rate will be defined in a Community regulation.

7. The provisions on redenomination of corporate equity do not of themselves raise any concerns; on the contrary, they appear to be helpful provisions which will facilitate the changeover process. The draft law facilitates the redenomination of the capital of public limited companies and limited liability companies by means of a simplified procedure, without any additional costs for companies, and settles the rounding problems that may occur as a result of such redenomination. It introduces provisions regarding the methods and procedure for converting the nominal values of shares and the share capital of public limited companies and limited liability companies, as well as details regarding the euro changeover procedure for these companies.

8. Moreover, the draft law provides for non-par value shares as an alternative to redenomination of shares into euro. This solution was recommended by the European Commission as with non-par

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3 See the English language version of Regulation (EC) No 974/98 and all the other official language versions, with the exception of the Greek language version.

4 Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ L 236, 23.9.2003, p. 33).

5 See paragraph 10 of ECB Opinion CON/2005/21 of 14 June 2005 at the request of Lietuvos Bankas on a draft law on the adoption of the euro and Section 2.4 of ECB Opinion CON/2005/51 of 1 December 2005 on a proposal for a Council Regulation amending Regulation (EC) No 974/98 on the introduction of the euro.

6 Article 693 of the draft law.

value shares there is no need for physical exchange of share certificates[7]. The share prices can be adjusted by simple splitting and there is no need for capital adjustment. Furthermore, such shares are allowed by the Second Company Law Directive[8]. The provisions regarding the introduction of non-par value shares are welcome since they introduce flexibility and simplicity.

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

Done at Frankfurt am Main, 16 December 2005.

[signed]

The President of the ECB

Jean-Claude TRICHET

7 See 'The Impact of the introduction of the euro on capital markets', Commission Communication (Euro Paper No 03, July 1997; available on the European Commission's website at www.europa.eu.int), p. 3.

8 Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ L 26, 31.1.1977, p. 1). Directive as last amended by the Act concerning the conditions of accession.