EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 17 September 2008

at the request of the Slovenian Ministry of Public Administration

on a draft law on restrictions and prohibitions for public office holders

(CON/2008/43)

Introduction and legal basis

On 14 July 2008 the European Central Bank (ECB) received a request from the Slovenian Ministry of Public Administration for an opinion on a draft law on restrictions and prohibitions for public office holders (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 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 draft law falls within the regulatory framework for the prevention of corruption in Slovenia and regulates: (i) restrictions on officials regarding the pursuit of gainful activities; (ii) restrictions on officials regarding the acceptance of gifts in connection with discharging their office; (iii) the conduct of business by companies and other entities with the public sector in cases where officials are connected with both parties; and (iv) the duty of officials to declare information on their wealth and the disclosure of such information.

1.2 The purpose of the draft law, as stated in its explanatory memorandum, is to bring the Law on the incompatibility of holding public office with the pursuit of gainful activities in line with the Slovenian Constitution[2], following a decision by the Slovenian Constitutional Court[3]. Accordingly, the draft law, which otherwise reflects the basic contents of the abovementioned Law, assigns the role of supervising compliance with a large part of its provisions to the Court of Audit, an independent state body, and limits the public disclosure of personal data. In addition, pursuant to

1 OJ L 189, 3.7.1998, p. 42.

2 Law on the incompatibility of holding public office with the pursuit of gainful activities, adopted on 10 February 2006, published in Uradni list Republike Slovenije (Official Gazette) No 20/2006.

3 Decision of the Constitutional Court of the Republic of Slovenia, No U-I-57/06 of 29 March 2007, published in the Official Gazette No 33/2007.

the draft law, the Court of Audit would be able to review the financial and other operations of officials and notify the competent authorities of its findings.

2. General observations

The ECB welcomes this consultation by the Ministry of Public Administration. As the term 'officials', which is used for public office holders and is further defined for the purposes of the draft law, explicitly includes the Governor of Banka Slovenije and other high-ranking officials of Banka Slovenije (Article 2(1)), the draft law should therefore be assessed from the perspective of compatibility with the principle of personal independence of the Governor and of other members of the Governing Board of Banka Slovenije.

3. Applicability of the draft law to members of the Governing Board of Banka Slovenije

3.1 *Incompatibility of functions*

Under Article 1(2) of the draft law, the restrictions imposed regarding the acceptance of gifts and the pursuit of gainful activities do not apply to those categories of officials for whom these issues are regulated by other laws. The issue of gainful activities pursued by members of the Governing Board of Banka Slovenije, including an ultimate sanction (removal from office) in the case of incompatibility of functions, is regulated by the Law on Banka Slovenije[4] (Articles 38 and 39). Therefore, the provisions of Article 8 of the draft law governing dismissal of officials who pursue gainful activities do not apply to members of the Governing Board of Banka Slovenije and compliance with the principle of personal independence as laid down in Article 14.2 of the ESCB Statute should not be jeopardised by the relevant provisions of the draft law.

3.2 *Acceptance of gifts*

The provisions of the draft law restricting acceptance of gifts by public office holders are similar to the requirements laid down in the Code of Conduct for the members of the Governing Council[5] (hereinafter the 'Code of Conduct'), regarding which a declaration of compliance has also been signed by the Governor of Banka Slovenije. Although the restrictions in the draft law are to a certain extent stricter than the corresponding provision in Article 3.3 of the Code of Conduct (regarding maximum value, form of gift and applicability of the provisions to officials' family members), they follow the same basic principles as stated in Article 2 of the Code of Conduct, while public disclosure of gifts received also serves the principle of transparency.

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4 Published in the Official Gazette Nos 58/02, 85/02 and 39/06. The relevant provisions of the Law on Banka Slovenije were aligned with Article 14.2 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'ESCB Statute'), following 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.

5 Memorandum of Understanding on a Code of Conduct for the members of the Governing Council (OJ C 123, 24.5.2002, p. 9), as amended by the Memorandum of Understanding amending the Memorandum of Understanding on a Code of Conduct for the members of the Governing Council (OJ C 10, 16.1.2007, p. 6).

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

Done at Frankfurt am Main, 17 September 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET