EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 15 December 2009

on the competences of Banka Slovenije related to Slovenia's membership of the International Monetary Fund

(CON/2009/100)

Introduction and legal basis

On 1 December 2009, the European Central Bank (ECB) received a request from the Slovenian Ministry of Finance (hereinafter the 'Ministry') for an opinion on a draft Law amending the Law on the membership of the Republic of Slovenia of the International Monetary Fund (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

The main purpose of the draft law is to amend the Law on the membership of the Republic of Slovenia of the International Monetary Fund[2] (hereinafter the 'Law') to provide a legal basis for bilateral agreements between Slovenia and the International Monetary Fund (IMF). These agreements will be concluded in line with the Presidency Conclusions of the European Council meeting of 19 and 20 March 2009 to provide additional funds for the IMF from the Member States in the context of a joint Union response to the global financial crisis. As the provision of such additional funds to the IMF is neither part of the regular IMF quota nor the allocated special drawing rights, and the Member States will provide these funds on the basis of bilateral agreements with the IMF, new legislation is needed for Slovenia's provision of additional funds for the IMF's activities and to define the scope and content of the obligations of Banka Slovenije and of the State towards the IMF.

According to Article 2 of the draft law amending Article 7 of the Law, the State provides funds to meet Slovenia's obligations to the IMF arising from the special drawing rights under the first and the second allocations, and Banka Slovenije provides funds to meet all Slovenia's other obligations to the IMF (this

1 OJ L 189, 3.7.1998, p. 42.

2 *Zakon o članstvu Republike Slovenije v Mednarodnem denarnem skladu*, published in *Uradni list Republike Slovenije* Nos 2/93 and 70/98.

refers to Slovenia's IMF quota and any additional payments). In order to neutralise the risks associated with such payments by Banka Slovenije, the State will reimburse Banka Slovenije for all non-recovered funds provided under bilateral agreements with the IMF, and for any costs arising from differences in interest payments, exchange rate differences and measures taken to protect against the exchange rate risk, as well as any transaction costs incurred by Banka Slovenije in the fulfilment of its obligations vis-à-vis the IMF. In addition, the State will reimburse Banka Slovenije for 50 % of the costs referred to above arising in connection with the payment of the quota and participation in the financial transactions plan.

In its representation in the IMF, Slovenia's choice of its Alternate is no longer limited to the Deputy Governor of Banka Slovenije. Accordingly, under Article 3 of the draft law amending Article 8 of the Law, any other person duly authorised by the Governor of Banka Slovenije may act as the Alternate.

Finally, Article 4 of the draft law introduces changes to Article 9 of the Law, pursuant to which the Slovenian Government can lay down more detailed conditions concerning rights and obligations vis-à-vis the IMF, taking into account the Law and the IMF's Articles of Agreement. The draft law now proposes that an agreement should be made between the Ministry and Banka Slovenije stipulating the conduct of operations and the fulfilment of obligations arising from Slovenia's membership in the IMF and repealing the Government Decision currently in force governing these issues.

2. General observations

The ECB reminds the Ministry that the tasks performed by Banka Slovenije must comply with the monetary financing prohibition under Article 123(1) of the Treaty which prohibits, among other things, overdraft facilities or any other type of credit facility with the national central banks in favour of central governments. However, Article 7 of Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 [now 123] and 104b(1) [now 125(1)] of the Treaty[3] states that the financing by the national central banks of obligations falling upon the public sector vis-à-vis the IMF is not regarded as a credit facility within the meaning of Article 123 of the Treaty[4]. The payment by Banka Slovenije of the additional obligations of the State to the IMF provided for in Article 2 of the draft law falls within the scope of Article 7 of Regulation (EC) No 3603/93.

3 OJ L 332, 31.12.1993, p. 1.

4 It is noted that Article 25(2) of the Law on Banka Slovenije (*Zakon o Banki Slovenije*, published in *Uradni list Republike Slovenije* No 72/06) provides that financing of the Republic of Slovenia's liabilities to the IMF is deemed to be an exemption from the prohibition of financing of the public sector.

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

Done at Frankfurt am Main, 15 December 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET