EUROPEAN CENTRAL BANK

EUROSYSTEM

EN **ECB-PUBLIC**

OPINION OF THE EUROPEAN CENTRAL BANK

of 28 September 2015

on a draft law on the financial instruments market

(CON/2015/34)

Introduction and legal basis

On 29 July 2015 the European Central Bank (ECB) received a request from the Slovenian Ministry of Finance for an opinion on the draft law amending the Law on the Financial Instruments Market[1] (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, fifth and sixth indents of Article 2(1) of Council Decision 98/415/EC[2], as the draft law relates to Banka Slovenije, settlement systems and rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. For those elements of the draft law with the exclusive purpose of transposing Union law, the ECB's competence to deliver an opinion is based on Article 25.1 of the Statute of the European System of Central Banks and of the European Central Bank. 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 transposes certain provisions from a number of Union Directives in the financial area[3] into Slovenian law, and adjusts Slovenian legislation to certain Union Regulations in the financial area[4].

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1 Zakon o trgu finančnih instrumentov (official gazette of the Republic of Slovenia, no. 108/10 – official consolidated version, 78/11, 55/12, 105/12 – ZBan-1J and 63/13 – ZS-K).

2 Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

3 The Union Directives concerned are: 1) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338), as regards the investment firms (mainly to correct the cross-references to the Slovenian Law on Banking which implements this Directive and to which the Law on the Financial Instruments Market refers); 2) Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC (OJ L 294, 6.11.2013, p. 13); and 3) Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (OJ L 153, 22.5.2014, p. 1), to the extent that the amendments relate to the amendments made by the latter to Directive 2003/71/EC, in particular regarding the duty of the national financial market supervisor to transmit final information about prospectuses to ESMA.

1.2 As regards Banka Slovenije, it is noted that the draft law removes the provisions regulating the supervisory competences of the Securities Market Agency and Banka Slovenije over the central securities depository. These competencies will be regulated in a separate legal act implementing the Central Securities Depositories Regulation.

1.3 The draft law also amends the Law on the Financial Instruments Market in order to: (i) clarify the bankruptcy procedure for investment firms, (ii) amend certain conditions for the establishment of small investment firms, (iii) amend the provisions regarding liability for the accuracy of the information contained in prospectuses, (iv) define the conditions for the removal of debt instruments from trading on an organised market, (v) supplement the provisions on the performance of investment services, where the client has been referred by another investment firm, (vi) introduce amendments, as regards the stock exchange and stock market, to clarify the application, mutatis mutandis, of certain provisions of the Law on Banking, (vii) regulate cooperation between the Securities Market Agency and other competent third-country financial market authorities and (viii) align certain provisions of the Law on the Financial Instruments Market with other national laws.

1.4 Article 95 of the draft law corrects certain inconsistencies in the provisions of Slovenian law transposing Directive 98/26/EC[5] (the 'Settlement Finality Directive' or 'SFD'), in particular regarding the implementation of Article 3 of the SFD. These inconsistencies concern Article 450.a of the current Law on the Financial Instruments Market, which governs the finality of transfer orders entered into the securities settlement system in the event of the insolvency of a system participant (or other proceeding or measures of a competent authority of the Republic of Slovenia, or of any other country, against a settlement system participant, excluding or limiting the execution of the orders of such participant, as referred to in Article 450, and hereinafter referred to as 'insolvency proceedings'). In particular, Article 450.a, as amended by Article 95 of the draft law, now (i) clearly distinguishes between the use of the terms 'entry' and 'entered' to differentiate between the '*moment of entry of a transfer order into a system*' (which is to be defined in the rules of the system, as required by Article 39(2) and 48(8) of the CSDR and Article 3 of the SFD) and the '*sending*' of the transfer order by the system participant. Furthermore, Article 95 of the draft law corrects the reference to the timeframe within which the execution of a transfer order, if it has been entered into the system after the opening of insolvency proceedings against a participant, must occur in order for it to be valid, which is understood to mean legally enforceable and binding on third parties. Article 450.a now stipulates that a settlement order that was entered into the system after the opening of such a proceeding, will be valid if it was executed in the system *within the same day*. A further correction is made to clarify that the *system operator* must be able to prove that he was not aware, or could not have been aware, of the opening of the insolvency proceedings

4 The Union Regulations concerned are: 1) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1), as regards investment firms/services; and 2) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1) (the 'Central Securities Depositories Regulation' or 'CSDR').

5 Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p.45).

against the participant at the point in time when the transfer order became irrevocable. Finally, the abovementioned inconsistencies are addressed by rewording point 2 of paragraph 1 of Article 450.b, which governs the effects of insolvency proceedings against a settlement system participant on the validity of the rights arising from collateral security provided in connection with the system.

2. Observations

2.1 The ECB takes note of the draft law.

2.2 The ECB welcomes the fact that Article 95 and 96 of the draft law remove previous shortcomings in the text of Articles 450.a and 450.b of the current Law on the Financial Instruments Market, implementing the SFD. In this respect, it is noted that the reference in the amended second paragraph of Article 450.a to the execution of a transfer order within the '*day*' should be replaced by a reference to '*business day, as defined by the rules of the system*', to remove any uncertainty about the status of any night-time settlement services[6].

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

Done at Frankfurt am Main, 28 September 2015.

[signed]

The President of the ECB

Mario DRAGHI

6 See Section 6.1.3 of the explanatory memorandum to the proposal for a Directive of the European Parliament and of the Council amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims (COM(2008)213 final).