EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 13 March 2006

at the request of the Slovenian Ministry of Finance on a draft law amending the Law on Banka Slovenije

(CON/2006/17)

Introduction and legal basis

On 13 February 2006 the European Central Bank (ECB) received a request from the Slovenian Ministry of Finance for an opinion on a draft law amending the Law on Banka Slovenije (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, second, third and fourth indents of Article 2(1) and Article 2(2) 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, means of payment, a national central bank (NCB), the collection, compilation and distribution of statistics and the instruments of monetary policy. 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 bring the Law on Banka Slovenije (hereinafter the 'Law') into line with the Treaty and the Statute of the European System of Central Banks and of the European Central Bank, in particular with regard to the legal integration of Banka Slovenije into the Eurosystem. The draft law amends, *inter alia*, provisions relating to Banka Slovenije's independence, economic policy objectives, monetary policy instruments, foreign reserve management, the issue and distribution of banknotes and coins and international cooperation, and introduces the correct spelling of the word 'euro'. Moreover, in view of the inclusion of bank credits in the single list of eligible collateral for Eurosystem credit operations, the draft law introduces a register of financial assets. Finally, it also introduces sanctions for breaches of Council Regulation (EC) No 2182/2004 of 6 December 2004 concerning medals and tokens similar to euro

1 OJ L 189, 3.7.1998, p. 42.

coins[2] and Council Regulation (EC) No 2183/2004 of 6 December 2004 extending to the non-participating Member States the application of Regulation (EC) No 2182/2004 concerning medals and tokens similar to euro coins[3].

2. General observations

Terminological considerations

2.1. In several parts of the draft law, the wording 'introduction of the euro as the monetary unit of the Republic of Slovenia' is used. In order to be consistent with the terminology used in Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro[4], the draft law should refer to the 'introduction of the euro as the currency of the Republic of Slovenia'[5].

2.2. The ECB welcomes Article 1 of the draft law, which provides that in the Law the word 'evro' 'in all grammatical cases shall be replaced with the word "euro" in the appropriate case'. 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. The European Council at its meeting in Madrid on 15 and 16 December 1995 concluded that 'the name given to the European currency shall be Euro' and 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', and these conclusions were reflected in Regulation (EC) No 974/98. The Community, as the exclusive holder of competence in monetary matters, determines alone the name of the single currency. On the basis of these legal considerations, and in view of the supremacy of Community law, the name of the single currency in the nominative singular case is to be consistently written in all national legal acts as 'euro'[6]. The ECB expects that the correct spelling of the word 'euro' will be applied in all national legal acts using the name of the single currency and invites the consulting authority to take a proactive approach to ensure this.

Update of the structure of the Law

2.3. The current structure of the Law would benefit from updating and consolidation in view of the fact that Slovenia has been a member of the EU since May 2004. The provisions applying today to Banka Slovenije are dispersed in various parts of the Law, and in particular in Chapter 10 (on Slovenian EU membership), whilst the text still contains obsolete provisions. For reasons of legal

---

2 OJ L 373, 21.12.2004, p. 1.

3 OJ L 373, 21.12.2004, p. 7.

4 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).

5 In addition to being the currency of the 'participating Member States'. See paragraph 1.1 of ECB Opinion CON/2006/10 of 23 February 2006 at the request of the Central Bank of Malta on a draft law on the adoption of the euro.

6 See the following ECB Opinions: CON/2005/21 of 14 June 2005 at the request of Lietuvos bankas on a draft law on the adoption of the euro; 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; and 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.

clarity, it would be advisable to consolidate and update the Law by deleting provisions that are obsolete and/or completing them with rights and obligations that came into force as a consequence of Slovenia's accession to the EU.

Banka Slovenije's independence and integration into the Eurosystem

2.4. The draft law addresses most of the issues that the ECB raised in its Convergence Report 2004[7]. The ECB welcomes those elements of the draft law that will contribute to achieving the required level of legal convergence.

2.5. Concerning institutional independence, the draft law[8] amends Article 27 of the Law to expressly exclude the management of foreign reserves from the scope of Banka Slovenije's contract with the Ministry of Finance, which will foster Banka Slovenije's independence in this respect.

2.6. Concerning personal independence, the draft law[9] partially aligns the wording of Article 39 of the Law (removal from office of Governing Board members) with Article 14.2 of the Statute. It deletes the third ground for dismissal, namely that the Governor has been found guilty of a criminal office and sentenced to imprisonment, which has no equivalent in the Statute. However, the ECB would welcome further amendments to this Article to bring the grounds for dismissal of the Governor of Banka Slovenije fully into line with the wording of Article 14.2 of the Statute. In particular, the Law should specify, without supplementary conditions, that a Governor may be relieved from office if they no longer fulfil the conditions required for the performance of their duties or if they have been guilty of serious misconduct.

2.7. The draft law[10] also introduces a new Article 39.a into the Law exempting the members of Banka Slovenije's Governing Board from those provisions of the Law on the prevention of corruption that relate to the sanction of early termination of the term of office.

2.8. In relation to the legal integration of Banka Slovenije into the Eurosystem, the amendment proposed in the draft law[11] to Article 58(2) of the Law specifies which of Banka Slovenije's tasks will be performed in accordance with the Treaty and the Statute from the day the euro is introduced in Slovenia.

2.9. The ECB would also advise aligning the wording of the second and third paragraphs of Article 2 of the draft law concerning Banka Slovenije's objectives with the wording of Article 105(1) of the Treaty. Indeed, it is without prejudice to the objective of price stability that NCBs must support the general economic policies in the Community with a view to contributing to the achievement of the objectives of the Community as laid down in Article 2 of the Treaty.

---

7 Convergence Report 2004, pp. 232-234.

8 Article 8 of the draft law.

9 *Ibid.*, Article 15.

10 *Ibid.*, Article 16.

11 *Ibid.*, Article 28.

2.10. Two further provisions adequately address integration into the Eurosystem: from the day the euro is introduced, Banka Slovenije will participate in the ECB's sanctions regime and will only be able to participate in international monetary organisations after prior ECB approval[12].

3. Specific observations

Collection and processing of statistical data

3.1. Under the new point 11 of Article 12(1) of the Law[13], Banka Slovenije must also perform financial statistics tasks, as a minimum within the parameters required for the functioning of the European System of Central Banks (ESCB). The proposed definition of this task, limiting it to financial statistics, could be too narrow. For this reason, the ECB recommends slightly amending the provision to make it clear that Banka Slovenije must as a minimum perform the statistical tasks which are required for the functioning of the ESCB, but may also perform other financial statistics tasks.

3.2. The draft law[14] amends Article 13 of the Law to extend Banka Slovenije's responsibility to collect and manage statistical data and information. This is indeed of importance for the implementation of its tasks and consequently for the functioning of the ESCB, as is also specified in Article 55 of the Law (concerning Banka Slovenije's information system). However, the ECB would recommend refining the existing reference to 'statistical data and information' in the draft law by including an explicit reference to Article 5 of the Statute.

Payment and settlement systems

3.3. In its assessment carried out in 2003 concerning securities settlement systems (SSSs) of accession countries[15], the ECB noted that Banka Slovenije's oversight role in relation to the foreign exchange bills settlement system that it operates had not yet been established. The draft law's proposed amendment[16] to Article 12(1) of the Law explicitly inserts point 15 on Banka Slovenije's oversight of the operation of payment and settlement systems. Pursuant to Article 14 of the Law, Banka Slovenije is already entitled to manage payment systems. The ECB would in addition suggest that the Law explicitly states that Banka Slovenije may operate a settlement system, as this would reflect the existing situation.

Definitions of 'banks' and 'savings banks'

12 Article 34 of the draft law, inserting new Articles 67.b and 67.a into the Law.

13 Inserted by Article 3 of the draft law.

14 Article 4 of the draft law.

15 Presented in the report entitled 'Assessment of accession countries' securities settlement systems against the standards for the use of EU securities settlement systems in Eurosystem credit operations', January 2004; available on the ECB's website at www.ecb.int.

16 Article 3 of the draft law.

3.4. The draft law[17] inserts a new Article 14.a into the Law containing definitions of 'banks' and 'savings banks'. The ECB questions the scope of these definitions since they could be interpreted as being narrower than the Community concept of 'credit institutions'[18].

3.5. A broader definition of 'banks' and 'savings banks' would also be compatible with certain other provisions of the draft law that already include references to entities other than banks and savings banks. The draft law's proposed amendment[19] of Article 43(1) of the Law extends Banka Slovenije's supervision from banks and savings banks also to include 'other persons pursuant to the law'. In the draft law's proposed amendment[20] to Article 44 of the Law, the deletion of specific references to 'banks' and 'savings banks' means the provision is extended to all relevant participants. For reasons of consistency, the ECB would suggest amending all other provisions of the Law referring to 'banks' and 'savings banks' accordingly.

Immunity of foreign reserve assets

3.6. The ECB welcomes the proposed[21] new Article 22.a of the Law, which exempts the official foreign reserve assets of other countries and central banks deposited at Banka Slovenije from any judicial or extra-judicial enforcement.

Register of financial assets

3.7. The ECB notes with interest the provisions of the proposed new Chapter 4.2.a of the Law[22], which establishes a register of bank credits and other financial assets by means of which Banka Slovenije intends to secure liabilities to itself, the ECB and the NCBs of Member States. This proposal supports the ECB Governing Council's decision published on 18 February 2005 to include bank credits in the Single List of assets eligible as collateral for Eurosystem credit operations[23]. The new register of financial assets which will be established and administered by Banka Slovenije will contribute to ensuring that a valid security interest may be created over bank credits in a simple and certain manner and that the collateral can be swiftly realised in the event of counterparty default.

3.8. The ECB understands that the creation of collateral rights over registered assets by way of entry in the abovementioned register, in accordance with the new Article 22.c of the Law, is without prejudice to any other method of creating collateral in favour of Banka Slovenije, the ECB and the NCBs of Member States. In particular, it should not affect the provision of book-entry securities as collateral either by way of an entry in the accounts maintained by an SSS operator or by a similar method. It might be advisable to clarify the relationship between the different methods of creating

17 *Ibid.*, Article 5.

18 Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions (OJ L 126, 26.5.2000, p. 1). Directive as last amended by Directive 2005/1/EC (OJ L 79, 24.3.2005, p. 9).

19 Article 19 of the draft law.

20 *Ibid.*, Article 20.

21 *Ibid.*, Article 6.

22 Inserted by Article 6 of the draft law.

23 Available on the ECB's website at www.ecb.int.

collateral rights. In this respect, the ECB suggests removing the reference to point 8 of Article 12(1) which is contained in the proposed new Article 22.b of the Law.

3.9. As regards the creation of collateral rights over bank credits in accordance with the proposed new Article 22.c of the Law, the ECB's view is that the position of Banka Slovenije, the ECB and the NCBs of Member States as takers of collateral would be considerably improved if the first paragraph of the proposed Article 22.c were complemented by a provision prohibiting set-off against opposing claims by the debtor of a bank credit for the duration of the existence of collateral rights over such bank credit by way of registration.

3.10. Furthermore, the ECB understands that the proposed new Article 22.f is intended to protect collateral rights of Banka Slovenije, the ECB and the NCBs of Member States that have been established in good faith against conflicting third-party rights. However, the current wording of Article 22.f may not fully convey this meaning. The ECB suggests considering rewording this provision, to make it clear that collateral rights of Banka Slovenije, the ECB and the NCBs of Member States which have been acquired in good faith have priority over any third-party claims.

Prohibition on monetary financing

3.11. Under Article 24 of the Law, Banka Slovenije may not grant overdrafts or any other type of credit facility in favour of 'bodies of the Republic of Slovenia, of the European Union or of European Union Member States, or in favour of their regional and local authorities, and other public entities'. In order to ensure that this provision covers all categories of entities covered by Article 101 of the Treaty, thus avoiding any risk of discrepancy, the ECB recommends either using the exact wording of Article 101 of the Treaty in Article 24 of the Law or inserting an explicit reference to the prohibition under Article 101 of the Treaty.

Reporting of Banka Slovenije

3.12. The draft law[24] amends Article 26, concerning Banka Slovenije's obligation to report on its activities. It specifies that Banka Slovenije reports exclusively to the National Assembly of the Republic of Slovenia at least biannually. This provision does not seem fully to recognise Banka Slovenije's specific position as an ESCB member and, after the euro is introduced, a Eurosystem member, subject to and reporting to its decision-making bodies, and the ECB recommends rewording it to this end.

Application of provisions of the Law on banking

3.13. The proposed new Article 42.a of the Law[25] stipulates that the provisions of the Law on banking shall apply *mutatis mutandis* to Banka Slovenije's procedure. The ECB understands this provision only to apply to the use of the provisions of Chapter XV (entitled 'Procedure for adopting decisions

24 Article 7 of the draft law.

25 Inserted by Article 18 of the draft law.

in individual matters') of the Law on banking[26] in individual matters falling within Banka Slovenije's fields of competence. For reasons of clarity, the ECB recommends making it clearer which provisions of the Law on banking will apply to Banka Slovenije.

Creation of provisions and assets in the valuation accounts

3.14. The ECB welcomes the two new articles[27] in Chapter 9 (entitled 'Income, expenditure and assets of Banka Slovenije') that refer to Banka Slovenije's position after the euro is introduced.

3.15. The proposed new Article 49.a of the Law makes it possible to create provisions for anticipated exchange rate, interest rate and price risks, in order to maintain the real value of assets. However, such provisions may not be created if, together with unrealised exchange rate differences, securities valuation effects and gold valuation effects, they would exceed 20 % of established net profit.

3.16. Under the proposed new Article 50.a of the Law, the unrealised income deriving from exchange rate and price changes must be allocated in its entirety to the valuation accounts, and it may only be used to cover unrealised expenditure deriving from the same types of change. After the allocation of the assets to the valuation accounts, the net profit must be allocated to general reserves and the Slovenian budget.

Issue and distribution of banknotes and coins after introduction of the euro

3.17. The following provisions of the Law govern the issue and distribution of banknotes and coins: Article 59; Article 60 (containing the amendment proposed in the draft law[28]); and the proposed new Article 60.a[29].

3.18. In Article 59, the reference to Article 7 of the Law, which historically concerns the issue of tolars as legal tender in Slovenia, should be deleted. This would reflect the fact that Banka Slovenije will no longer have the right to authorise the issue of banknotes with the status of legal tender. After the euro is introduced, such authorisation will derive from the Treaty and the Statute and will be closely linked to the exclusive right of the ECB's Governing Council to authorise the issue of banknotes within the Eurosystem. The ECB therefore suggests also inserting an explicit reference to Article 106(1) of the Treaty and Article 16 of the Statute.

3.19. Article 60 of the Law should be further amended to reflect the fact that the ECB's competence with respect to coin issue is limited to authorising the volume.

3.20. The ECB suggests reconsidering Article 60.a, which appears to be obsolete due to the existence of Articles 59 and 60 of the Law. It should at the very least be amended to ensure that the predistribution of banknotes and coins denominated in euro is subject to the rules and conditions that will be set out in the relevant ECB legal acts.

---

26 *Zakon o bančništvu*; published in the Official Gazette of the Republic of Slovenia, Nos 7/99, 59/01, 55/03 and 42/04.

27 Proposed new Articles 49.a and 50.a of the Law, inserted by Articles 24 and 25 of the draft law.

28 Article 29 of the draft law.

29 Inserted by Article 30 of the draft law.

3.21. Also, for reasons of legal clarity and certainty, and in order to avoid duplication, it would be advisable for the draft law specifically to repeal the entirety of Chapter 3, which will be obsolete once the euro is introduced.

Banka Slovenije tasks in the implementation of monetary policy

3.22. The wording of the proposed amendment[30] to Article 58(2) of the Law (on Banka Slovenije's tasks after the euro is introduced) should be amended to state that Banka Slovenije 'implements monetary policy', without any reference to 'defining' monetary policy. Indeed, pursuant to Article 12.1 of the Statute, the Community's monetary policy is exclusively formulated by the Governing Council[31].

3.23. Moreover, the proposed amendment[32] to Article 61(2) of the Law (on Banka Slovenije's tasks in the implementation of monetary policy after the euro is introduced) should also include a reference to Banka Slovenije's responsibility for the general liquidity of the banking system, as specified in point 3 of Article 11 of the Law (which sets out the ESCB's scope of competence), and not refer only to the tasks under point 1 of Article 11 of the Law. In addition, the proposed amendment to Article 61(2) of the Law should include a specific abrogation of Article 45 of the Law; the latter relates to Banka Slovenije's supervisory measures in connection with the implementation of monetary policy and does not sufficiently recognise the ECB's powers in this field.

Asset management after introduction of the euro

3.24. Pursuant to the amendment to Article 62 proposed in the draft law[33], Banka Slovenije will from the introduction of the euro manage: (i) the official foreign reserves that it has not transferred to the management of the ECB; (ii) its other assets; and (iii) any other assets entrusted to it. This does not sufficiently recognise the ECB's powers in this field and could create the misleading impression that Banka Slovenije is autonomous as regards the management of foreign reserve assets. The ECB would therefore like to draw attention to Article 31.2 of the Statute concerning foreign reserve assets held by NCBs: this provides that all operations in foreign reserve assets remaining with the NCBs after the transfer of foreign reserve assets to the ECB under Article 30 of the Statute must, above a certain limit to be established within the framework of Article 31.3 of the Statute, be subject to approval by the ECB in order to ensure consistency with the exchange rate and monetary policies of the Community. To this end, an explicit reference to Article 31 of the Statute and the legal framework adopted on the basis thereof should be added.

Exchange rate list of Banka Slovenije

30 Article 28 of the draft law.

31 See paragraph 11 of ECB Opinion CON/2005/60 of 30 December 2005 at the request of Lietuvos bankas on a draft law amending the Lietuvos bankas Act.

32 Article 31 of the draft law.

33 *Ibid.*, Article 32.

3.25. Under the proposed amendment to Article 67 of the Law[34], after the euro is introduced Banka Slovenije 'shall publish an exchange rate list on the basis of the reference exchange rates of foreign currencies determined and published by the European Central Bank, and shall determine and publish exchange rates of foreign currencies that are not on the exchange rate list of the European Central Bank'. The ECB suggests rewording Article 67 to provide for the possibility of Banka Slovenije publishing euro foreign exchange reference rates set by the ECB and any other exchange rates that are not on the list published by the ECB. Otherwise this provision could be misinterpreted as a mandatory requirement to publish exchange rates.

International cooperation of Banka Slovenije

3.26. The proposed new Article 67.a of the law[35] provides that from the day of the introduction of the euro Banka Slovenije 'shall participate in international monetary organisations after prior approval by the ECB'. The ECB suggests bringing this wording closer to that of Article 6.2 of the Statute, under which the NCBs may participate in international monetary institutions 'subject to' the ECB's approval.

Infringements by banks, savings banks and other entities

3.27. Point 1 of both Article 68(1) and Article 69(1) of the Law[36] could be slightly amended to specify more clearly that the imposition of a fine for an infringement of the obligation to submit data and information required by Banka Slovenije in performing its tasks is without prejudice to the broader requirement to impose a sanction for an infringement of the obligation to submit the statistical data and information which Banka Slovenije needs to perform its tasks as an ESCB member. The relevant sanctions are already laid down in the proposed new Article 67.b of the Law[37], which concerns the ECB's sanctions regime.

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

Done at Frankfurt am Main, 13 March 2006.

[signed]

The President of the ECB

Jean-Claude TRICHET

34 *Ibid.*, Article 33.

35 Inserted by Article 34 of the draft law.

36 Containing the amendments proposed in Articles 35 and 36, respectively, of the draft law.

37 Inserted by Article 34 of the draft law.