OPINION OF THE EUROPEAN CENTRAL BANK

of 18 December 2015

on certain amendments to Banka Slovenije's institutional framework

(CON/2015/57)

Introduction and legal basis

On 22 October 2015 the European Central Bank (ECB) received a request from the President of the National Assembly of the Republic of Slovenia 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 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[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 draft law, prepared and submitted to the Slovenian National Assembly by a group of its deputies, proposes amendments to the Law on Banka Slovenije[2], the Law on the Court of Audit[3], the Law on banking[4], the Law on civil servants[5] and the Law on the public sector salary system[6], which would bring about changes to Banka Slovenije's institutional framework. In particular, the draft law:

(a) proposes changes to the procedure and grounds for removing a member of Banka Slovenije's Governing Board from office, by stipulating that the National Assembly is to decide on their removal from office if they are in breach of the law or the Constitution or where the Court of Audit of the Republic of Slovenia calls for their dismissal. Additionally, the draft law proposes that the incompatibility of functions of a member of Banka Slovenije's Governing Board, which may lead to their termination or removal from office by the National Assembly, is to be determined by the Commission for the Prevention of Corruption of the Republic of Slovenia. Moreover, the draft law proposes deleting a currently applicable provision according to which, in the event that specific

1 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).

2 Zakon o Banki Slovenije (ZBS-1) (Ur. l. RS No 72/06 – official consolidated text, 59/11).

3 Zakon o računskem sodišču (ZRacS-1) (Ur. l. RS No 11/01 and 109/12).

4 Zakon o bančništvu (ZBan-2) (Ur. l. RS No 25/15).

5 Zakon o javnih uslužbencih (ZJU) (Ur. l. RS No 63/07 – official consolidated text, 65/08, 69/08 – ZTFI-A, 69/08 – ZZavar-E and 40/12 – ZUJF).

6 Zakon o sistemu plač v javnem sektorju (ZSPJS) (Ur. l. RS No 108/09 – official consolidated text, 13/10, 59/10, 85/10, 107/10, 35/11 – ORZSPJS49a, 27/12 – Decision of the Constitutional Court, 40/12 – ZUJF, 46/13, 25/14 – ZFU, 50/14, 95/14 – ZUPPJS15 and 82/15).

laws are breached, early termination of office, which is a sanction provided for in those laws, shall not apply to Banka Slovenije's Governing Board members;

(b) proposes that the Court of Audit of the Republic of Slovenia shall carry out regularity and performance audits of Banka Slovenije's operations as well as carry out audits of Banka Slovenije's supervisory activities. In this regard, the draft law also permits confidential bank data to be shared with the Court of Audit;

(c) provides that, in addition to the representative from the National Assembly's committee in charge of finance and monetary policy and the Minister for Finance, a representative of the National Assembly's committee in charge of supervision of public finances may be a non-voting participant in Banka Slovenije's Governing Board meetings;

(d) increases Banka Slovenije's reporting requirements to the National Assembly, in particular with regard to banks that received State aid, and adds that the receiving body must protect such information, in line with the laws regulating confidential information;

(e) prohibits any of Banka Slovenije's Governing Board members, other than the Governor, from being employed by Banka Slovenije, and prohibits the Governor from chairing Banka Slovenije's Governing Board;

(f) states that Banka Slovenije must prepare and implement a financial plan, an employment and dismissal policy, and must use resources for salaries in accordance with the laws and regulations applicable for direct and indirect State 'budget users[7]'. The draft law further introduces provisions that include Banka Slovenije's staff under the definition of 'public servants' and that specify that Banka Slovenije is to use the public sector salary system as regards its staff;

(g) limits the number of possible terms of office of a governor and other members of Banka Slovenije's Governing Board to two; and

(h) gives Banka Slovenije's Governor the possibility to dismiss directors or deputy directors of its departments without providing any grounds.

2. General observations

The draft law proposes changes to Banka Slovenije's institutional framework, some of which are identical to or adding to changes already proposed by two previous legislative initiatives on which the ECB issued Opinions CON/2015/8[8] and CON/2014/25, which were not adopted by the National Assembly. The ECB now reiterates the views expressed in the two opinions where they are applicable to the draft law and supplements them as follows.

7 'Budget users' means those entities that are defined by the Law on public finance (Zakon o javnih financah, Ur. l. RS No 11/11 – official consolidated text, 14/13 – corr., 101/13 and 55/15 – ZFisP) as State and municipal authorities and organisations, municipal administrations and public funds, institutes and agencies established by the State or a municipality.

8 All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

3. Removing a member of Banka Slovenije's decision-making bodies from office and other changes concerning Banka Slovenije's decision-making bodies

3.1 As explained in its previous opinions, Article 130 of the Treaty, as reflected in Article 7 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'), lays down the principle of central bank independence, which prohibits national central banks (NCBs) and members of their decision-making bodies from seeking or taking instructions from external parties, and prohibits governments of the Members States from seeking to influence the members of the NCB's decision-making bodies. A core element of this principle is the personal independence of the members of an NCB's decision-making bodies, as reflected in Article 14.2 of the Statute of the ESCB. In particular, Article 14.2 provides, inter alia, that governors may only be relieved from office if they no longer fulfil the conditions required for the performance of their duties or if they have been found guilty of serious misconduct, with the possibility of recourse to the Court of Justice of the European Union.

The purpose of Article 14.2 of the Statute of the ESCB is to prevent the authorities involved in the appointment of governors, particularly the government or parliament, from exercising their discretion to dismiss a governor, which would be contrary to the principle of personal independence of the members of the NCB's decision-making bodies. Since Article 14.2 is directly applicable, NCB statutes should either contain grounds for dismissal in line with Article 14.2, or should omit any mention of such grounds.

As consistently noted in the ECB's convergence reports and opinions, personal independence would be jeopardised if the same rules did not also apply to other members of NCB decision-making bodies involved in the performance of European System of Central Bank- (ESCB-) related tasks. Various provisions of the Treaty and the Statute of the ESCB require comparable security of tenure. Article 14.2 of the Statute of the ESCB does not restrict the security of tenure to the governor's office, while Article 130 of the Treaty and Article 7 of the Statute of the ESCB refer to members of the decision-making bodies of NCBs rather than to governors specifically. This applies in particular where a governor is 'first among equals' as regards colleagues with equivalent voting rights or where such other members are involved in the performance of ESCB-related tasks[9].

3.2 Article 39(1)(4) of the Law on Banka Slovenije, as proposed under Article 8 of the draft law, provides for a member of Banka Slovenije's Governing Board to be removed from office if they have failed to act in accordance with the law or the Constitution. The subsequent paragraphs of Article 39, as proposed under the draft law, set out the procedure for bringing this ground for dismissal, which is to be based on an allegation of a breach of the law or the Constitution and which requires a call for evidence. Further, the National Assembly working body responsible for finance and monetary policy is required to assess the initiative for removal from office and, subsequently, submit to the National Assembly a proposal to dismiss a member of Banka Slovenije's Governing Board on the basis of a found breach of the law or the Constitution, after

9 See, for example, page 24 of the ECB's Convergence Report 2014. All ECB Convergence Reports are available on the ECB's website at www.ecb.europa.eu.

which time the National Assembly must then decide on whether the member should be removed.

Article 39(1)(5) of the Law on Banka Slovenije, as proposed under Article 8 of the draft law, provides that a member of Banka Slovenije's Governing Board may be removed from office if the Court of Audit issues a call to relieve them from their office. Again, the subsequent paragraphs of Article 39, as proposed under the draft law, set out the procedure for bringing this ground for dismissal, which is to be based in this situation on an audit report from the Court of Audit. According to Article 39(4), as proposed under the draft law, such report may include allegations of irregularities and of underperformance[10].

3.3 As a preliminary point, the ECB recommends that the procedures, including any initiative of the National Assembly for the dismissal of Banka Slovenije's Governing Board members, should be kept clearly distinct from the substantive provisions on the grounds for dismissal, i.e. in a separate legal provision, to ensure full consistency with the provisions of the Statute of the ESCB[11].

3.4 Further, the ECB understands, in view of the explanation in the explanatory memorandum, that these two grounds for dismissal aim to define the concept of 'serious misconduct' contained in Article 14.2 of the Statute of the ESCB. However, on the one hand, Article 39(1)(4) and (5), as proposed under the draft law, broaden the scope of 'serious misconduct', for which not every breach of law or negative regularity or performance audit is tantamount to or analogous with serious misconduct. On the other hand, points 4 and 5 may be seen as limiting the scope of the Union's legal concept of 'serious misconduct' to situations covered only by those two grounds. In this respect, it is also noted that serious misconduct may not necessarily lead to a call for dismissal from the Court of Audit. Consequently, Article 39(1)(4) and (5), as proposed under the draft law, add two new grounds for dismissal that are not provided in, and are therefore in addition to, those stipulated under Article 14.2 of the Statute of the ESCB. In conclusion, the national legislator should not specify what amounts to serious misconduct[12].

3.5 Furthermore, as already pointed out in its earlier opinions, the ECB has previously commented favourably on dismissal procedures where the finding of a breach of law had been within the remit of the judicial system[13]. However, the draft law entrusts a National Assembly working body, and not an independent judicial body, with the competence to determine whether the law or the Constitution has been breached. Thus, the dismissal of a Governing Board member may be based on a discretionary assessment by a National Assembly working body, whereas the purpose of Article 14.2 of the Statute of the ESCB is to prevent competent authorities, typically the government or parliament, from exercising their discretion on the grounds to dismiss a governor.

10 See Article 20(3) of the Law on Court of Audit, according to which (i) "regularity audit" means obtaining relevant and sufficient data to enable an opinion to be expressed on compliance of operation with regulations and guidelines that any user of public funds is required to observe in the conduct of operation and (ii) "performance audit" means obtaining relevant and sufficient data to enable an opinion to be expressed on economy, efficiency and effectiveness of business operation.

11 See, to that effect, paragraph 3.4.1 of Opinion CON/2012/73.

12 See Opinion CON/2012/73.

13 See Opinion CON/2012/73 and Opinion CON/2012/49.

3.6 In addition to the proposed changes addressed above, Article 7 of the draft law proposes that Article 38(3) of the Law on Banka Slovenije should be amended so that the Commission for the Prevention of Corruption would establish the compatibility of functions and their subsequent assignment of functions following the appointment of Governing Board members. In this regard, it is first recalled that the incompatibility of functions referred to in Article 39(1)(2) of the Law on Banka Slovenije, which lays down the conditions for the dismissal from office of the members of the Governing Board, is understood to only address the situations of incompatibility defined in Article 38(2) of that Law. In this respect, the ECB reiterates the view expressed in its Convergence Report of May 2006, Opinion CON/2014/25[14] and Opinion CON/2015/8[15] that inserting an explicit cross-reference to Article 38 in Article 39(1)(2) would be welcome for legal certainty reasons. In addition, it should be clarified that Article 39(1)(2) of the Law on Banka Slovenije is a 'condition required for the performance of duties' within the meaning of Article 14.2 of the Statute of the ESCB, and not a ground for dismissal in addition to the two grounds provided by Article 14.2 of the Statute of the ESCB, as described in paragraph 3.1 above.

3.7 As has been consistently noted by the ECB in its Convergence Reports, membership of a decision-making body involved in the performance of ESCB-related tasks is, as a matter of principle, incompatible with the exercise of other functions that could create a conflict of interest. This is a key aspect of the personal independence of members of an NCB's decision-making bodies. Further, the ECB has noted – with regard to the grounds for a Governor's dismissal – that the principle of personal independence applies from the moment a Governor is elected or appointed, even if the Governor has not yet taken up his or her duties. In order to safeguard this principle of personal independence, the ECB considers that an assessment of compatibility of functions should be carried out before a member is appointed to an NCB's decision-making body. Otherwise, there is the possibility of a conflict of interest between the other functions carried out by such member and the performance of his or her ESCB-related tasks. Here, the issue of potential conflicts appears to be addressed through the provision, in Article 38(3) of the Law on Banka Slovenije, that the Governor may not begin performing his or her functions until any incompatibility has been removed. Thus, in this respect, the procedure for assessing the compatibility of functions appears to be in line with the principle of personal independence, provided that the ECB's comments made below with regard to Article 38(2)(5) are taken into account.

3.8 Furthermore, according to Article 38(4) of the Law on Banka Slovenije, as proposed under Article 7 of the draft law, the Commission for the Prevention of Corruption also establishes the existence of an incompatibility of functions arising after a Governing Board member has been appointed. However, it appears that this is not wholly consistent with Article 39(6) of the Law on Banka Slovenije, in conjunction with Article 39(1)(2), which state that a Governing Board member may be relieved from office when the National Assembly has established that there are grounds for the incompatibility of functions. As provided for in Article 38(2)(5) of the Law on Banka Slovenije, 'other work or activities that might affect their members' independence or could conflict with Banka Slovenije's interests' may be considered to be a function that is incompatible with the position of a

14 See paragraph 2.4 of Opinion CON/2014/25.

15 See paragraph 3.3 of Opinion CON/2015/8.

Governing Board member. The provision of Article 38(2)(5) of the Law on Banka Slovenije involves a discretionary assessment on what affects the independence of, or constitutes a conflict of interest for, the Governing Board members. Given that incompatibilities may lead, under the terms of the draft law, to the dismissal of Governing Board members, and given that their dismissal should not be subject to a discretionary assessment of the National Assembly, this provision raises concerns as regards the personal independence of the Governing Board members. Thus, for reasons of clarity and legal certainty, the ECB recommends that the draft law should specify that the National Assembly is only allowed to establish that grounds for incompatibility of functions exist if the Commission for the Prevention of Corruption has already made such a finding.

3.9 In any event, it is not clear whether the Commission for the Prevention of Corruption would be competent to assess the full range of circumstances that would be incompatible with the role of a Governing Board member. In assessing the compatibility of functions, the Commission for the Prevention of Corruption will examine the points outlined in Article 38 of the Law on Banka Slovenije. However, as noted above, Article 38(2)(5) involves a discretionary assessment of what constitutes a conflict of interest – the objective being to ensure that no situation exists that would be incompatible with the function of a Governing Board member. Such incompatibilities may or may not relate to the sphere of corruption. Yet, it is not clear from the draft law whether the Commission for the Prevention of Corruption would have the mandate to assess incompatibilities that extend beyond its scope of competence. Thus, the ECB recommends that Banka Slovenije's Governing Board should retain the power to determine whether there are incompatibilities between the roles of members of the Governing Board and their other roles, insofar as such incompatibilities fall outside the mandate of the Commission for the Prevention of Corruption.

3.10 Article 9 of the draft law removes Article 39.a of the Law on Banka Slovenije, which currently states that 'the provisions of the law governing the prevention of corruption and the law governing the incompatibility of holding public office while simultaneously running a profitable activity, respectively, which contain the sanction of early termination of the term of office, shall not apply to Banka Slovenije's Governing Board members'. As explained in the Convergence Report of May 2006, as well as in Opinion CON/2010/27[16] in relation to the Law on integrity and prevention of corruption[17] the aim of Article 39.a, together with Articles 38 and 39 of the Law on Banka Slovenije, is to provide that members of Banka Slovenije's decision-making bodies can only be removed on grounds and using procedures that are compatible with the Treaty and the Statute of the ESCB and laid down in the Law on Banka Slovenije. With the deletion of Article 39.a, the ECB notes that the Law on integrity and prevention of corruption contains provisions indicating that breaches of some of the requirements thereunder may lead to early termination of office[18]. It should be ensured that the sanctions do not constitute new grounds and procedures to remove members of Banka Slovenije's decision-making bodies from office, in addition to those compatible with the Treaty and the Statute of the ESCB that are laid down in the Law on Banka Slovenije.

16 See paragraphs 3.1, 3.2 and the third subparagraph in paragraph 3.4 of Opinion CON/2010/27.

17 Zakon o integriteti in preprečevanju korupcije (ZIntPK) (Ur. l. RS No 69/11 – official consolidated text). The earlier law on prevention of corruption and the incompatibility of holding public office while running a profitable activity, are no longer in force.

18 See, e.g. Articles 13, 26, 28 and 45 of the Law on integrity and prevention of corruption).

3.11 The draft law also proposes additional changes concerning Banka Slovenije's decision-making bodies. Banka Slovenije has two decision-making bodies: the Governor and the Governing Board. The Governing Board is composed of five members, i.e. the Governor and four Vice-Governors. The draft law prohibits any of Banka Slovenije's Governing Board members, other than the Governor, from being employed by Banka Slovenije, and does not allow the Governor to chair Banka Slovenije's Governing Board.

3.12 Firstly, as highlighted in the ECB's 2014 Convergence Report, the ECB is not limited to making a formal assessment of the letter of national legislation, but may also consider whether the implementation of the relevant provisions complies with the spirit of the Treaty and the Statute of the ESCB. The ECB is particularly concerned about any signs of pressure being put on any NCB's decision-making bodies that would be inconsistent with the spirit of the Treaty as regards central bank independence. In this respect, the ECB recalls that the office of an NCB's Governor is accorded special status due to his or her capacity to act as a member of the ECB's Governing Council. The fact that this special status should be fully respected has led to the common practice among NCBs that the Governor is seen as 'first among equals' where decisions are taken by boards as collegiate NCB decision-making bodies. However, by providing that Banka Slovenije's Governor may not chair the Governing Board, the draft law departs from this practice and, as such, could be seen as an attempt to undermine the Governor's authority. Consequently, the suggested amendment to Article 30(2) of the Law on Banka Slovenije is, in itself, capable of jeopardising the Governor's personal independence.

3.13 The ECB considers that the draft law is unclear with regard to the nature of the powers of the new Governing Board President and the division of competences that would exist between the other Board members and the Governor. In particular, it is unclear whether the powers accorded to the Governor under Banka Slovenije's statute and rules of procedure would be construed as references to the powers of the new President of the Governing Board. In the ECB's view, it is imperative that the draft law provide clarity in terms of: (a) the precise scope of the powers and tasks to be assigned to the President of the Governing Board; (b) the limits of the competence of the President of the Governing Board, in particular as regards whether the role will have decision-making powers; and (c) the position of the President in Banka Slovenije's organisational structure, for instance, whether or not Banka Slovenije's staff members will report directly to the President of the Governing Board. The latter would raise additional concerns as regards the Governor's personal independence, if the Governor were not the President of the Governing Board. Without clarity in these respects, the ECB is concerned that Banka Slovenije's decision-making processes will be undermined.

3.14 It is also emphasised that any changes to the Governor's mandate can only be made in respect of future appointments, in order to ensure the existing Governor's personal independence.

4. Auditing of Banka Slovenije by the national Court of Audit

4.1 The draft law, with Articles 13 and 14, proposes entrusting the Court of Audit with the competence to carry out regularity and performance audits of Banka Slovenije's operations as well as to audit Banka Slovenije's supervisory activities[19].

4.2 In relation to the proposal to entrust the Court of Audit with the competence to carry out audits on the regularity and performance of Banka Slovenije's operations[20], the ECB reiterates the view expressed in Opinion CON/2015/8. Accordingly, the competences that a state audit office or similar body, such as the Court of Audit, may hold with respect to NCB activities and use of public finances, are compatible with the principle of central bank independence when the following safeguards are in place: (a) the scope of the control should be clearly defined by the legal framework; (b) the activities of the NCB's independent external auditors should not be prejudiced; (c) in line with the principle of institutional independence, as enshrined in Article 130 of the Treaty and Article 7 of the Statute of the ESCB, the audit should: (i) comply with the prohibition on giving instructions to an NCB and its decision-making bodies; (ii) not interfere with the NCB's ESCB-related tasks; and (iii) be carried out on an apolitical, independent and purely professional basis. On the basis of the above, the scope of the control is defined in the draft law, through the provisions of the Law on the Court of Audit, which define the concepts of regularity and performance audits. However, with a view to respecting the institutional independence of Banka Slovenije, the draft law should specify that the Court of Audit may not give instructions to Banka Slovenije, nor may it seek to influence the members of Banka Slovenije's decision-making bodies in situations where this may have an impact on Banka Slovenije's fulfilment of its ESCB-related tasks[21]. Additionally, the activities of Banka Slovenije's independent external auditor, which the Council approves pursuant to Article 27.1 of the Statute of the ESCB, should not be prejudiced.

4.3 The ECB recommends that the draft law should define the precise scope of the audit provided as regards Banka Slovenije's supervisory activities so as to ensure that the principle of independence set out in Article 19 of Council Regulation (EC) No 1024/2013, as well as the limitations provided in Article 27.2 of the Statute of the ESCB and Article 20(7) of Council Regulation (EC) No 1024/2013 as regards the supervisory tasks conferred on the ECB by Regulation (EU) No 1024/2013, are respected.

Further, in line with the principle of independence set out in Article 19 of Regulation (EU) No 1024/2013, the ECB recommends that the audit carried out by the Court of Audit on Banka Slovenije's supervisory activities should: (a) not extend to the application and interpretation of supervisory law and practices; (b) not interfere with the tasks conferred on the ECB by Regulation (EC) No 1024/2013, nor be extended to result in an indirect audit of the ECB; and (c) be carried out on a non-political, independent and purely professional basis.

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19 See the amendment of Article 52 of the Law on Banka Slovenije and of Article 25 of the Law on the Court of Audit.

20 For the definition of the regularity and performance audits from the Law on the Court of Audit see footnote 10.

21 Similarly, see paragraph 3.3 in Opinion CON/2011/9. It is noted that Article 2 of the Law on Banka Slovenije does not contain a prohibition against the Government and other bodies giving instructions to Banka Slovenije or seeking to influence the members of its decision-making bodies; however such prohibition is contained in Article 130 of the Treaty and Article 7 of the Statute of the ESCB.

5. Participation by representatives of third parties in Banka Slovenije's Governing Board meetings

The proposed changes under the draft law that extend the right to participate in meetings of Banka Slovenije's Governing Board to the representative of the committee of the National Assembly responsible for the supervision of public finances are fully identical to the previously proposed changes The ECB hereby reiterates[22] that the principle of central bank institutional independence, enshrined in Article 130 of the Treaty and Article 7 of the Statute of the ESCB, renders the participation by representatives of third parties in an NCB's decision-making body with a right to vote on matters concerning the performance by the NCB of ESCB-related tasks incompatible with the Treaty and the Statute of the ESCB, even if such a vote is not decisive[23]. Furthermore, the principle of central bank institutional independence also renders the participation of third party representatives, without a right to vote in the meetings of an NCB's decision-making body entrusted with the performance of ESCB-related tasks, incompatible with the Treaty and the Statute of the ESCB, if such participation interferes with the performance of ESCB-related tasks[24] by that decision-making body or endangers compliance with the ESCB's confidentiality regime.

6. Reporting by Banka Slovenije to the National Assembly and confidentiality of information[25]

6.1 The proposed amendments to Article 26 of the Law on Banka Slovenije with regard to Banka Slovenije's reporting to the National Assembly and the proposed amendment to Article 47 of the Law on Banka Slovenije on the protection of confidential data, as well as the proposed amendment to Article 16 of the Law on Banking with regard to Banka Slovenije sharing confidential supervisory information with the Court of Audit for the purposes of the proposed audit of Banka Slovenije's supervisory activities, as proposed under Articles 1, 12 and 15 of the draft law, should be assessed with regard to applicable Union law.

6.2 First, the proposed new Article 26(3) of the Law on Banka Slovenije specifies that the report addressed to the National Assembly should describe the work and the performance of the tasks of each of Banka Slovenije's Governing Board members separately. However, the Governing Board is a collegial body; accountable as a whole to the National Assembly. Depending on the level of detail required for such a report, this provision raises concerns regarding Banka Slovenije's institutional independence and the personal independence of the Governing Board members. The draft law should contain adequate safeguards in order to ensure that: (a) the reporting obligations do not interfere with the independence of the Governing Board members as provided for in Article 130 of the Treaty and Article 7 of the Statute of the ESCB; (b) the special status of governors in their capacity as members of the ECB's decision-making bodies is fully respected; and (c) confidentiality requirements pursuant to the Statute of the ESCB are observed[26].

22 See paragraph 5.2 of Opinion CON/2015/8 and paragraph 3 of Opinion CON/2014/25.

23 See, for example, page 22 of the ECB's Convergence Report 2014.

24 Pursuant to Article 2 of the Law on Banka Slovenije, the principle of central bank independence should be respected not only when Banka Slovenije performs ESCB-related tasks, but also when it performs national tasks.

25 See paragraph 5.1 and 5.2 of Opinion CON/2014/25 and paragraph 5.3 of Opinion CON/2015/8.

26 See, for example, p. 23 of the ECB's Convergence Report 2014.

6.3 Second, as pointed out by the ECB in its Convergence Reports[27], the obligation of professional secrecy for ECB and NCB staff under Article 37 of the Statute of the ESCB may give rise to similar provisions in NCBs' statutes or in Member States' legislation. The primacy of Union law and rules adopted thereunder also means that national laws on third party access to documents may not result in infringements of the ESCB's confidentiality regime. Access to an NCB's information and documents must be without prejudice to the ESCB's confidentiality regime, to which the members of NCBs' decision-making bodies and staff are subject. Where access to an NCB's information and documents is allowed under Union law, the NCBs should ensure that the receiving bodies protect the confidentiality of information and documents disclosed at a level corresponding to that applied by the NCBs themselves. Therefore, any provision of information permitted by the proposed amendments to Article 26 of the Law on Banka Slovenije with regard to Banka Slovenije's reporting to the National Assembly and the proposed amendment to Article 47 of the Law on Banka Slovenije on protection of confidential data should comply with applicable Union laws, including those governing the exchange of statistical and supervisory information, as well as the obligation of professional secrecy. In this respect, the ECB welcomes that Articles 26 and 47 of the Law on Banka Slovenije, as proposed under the draft law, include a provision that confidential information contained in reports to the National Assembly must be handled in accordance with the laws governing the protection of confidential information. However, it should be clear that the proposed amendments refer not only to national laws in this respect but also to Union law, including Article 37 of the Statute of the ESCB. For purposes of clarity and to avoid doubt, the ECB suggests inserting a specific reference to the obligation of professional secrecy laid down in Article 37 of the Statute of the ESCB in the amendments to Articles 26 and 47 of the Law on Banka Slovenije. In addition, the ECB recommends that the conditions for disclosing confidential information to the National Assembly, as referred to in paragraphs 6.4 and 6.5, are also respected when Banka Slovenije reports to the National Assembly.

Furthermore, without prejudice to the ECB's observations regarding the specific protection of statistical or supervisory information laid down in Union law and referred to in paragraphs 6.4 and 6.5, the ECB emphasises that confidential information may be exchanged only if necessary for the performance of the tasks of the body that receives the information. In this context, and subject to compliance with the conditions in paragraph 5 regarding participation of third party representatives in Banka Slovenije's Governing Board meetings, a representative of the National Assembly's committee for finance and monetary policy may participate in meetings of the Governing Board where they can become privy to any confidential information, including the details on granting State aid to credit institutions.

6.4 Third, with respect to the exchange of confidential statistical information, it is reiterated that according to Article 8(3) of Council Regulation (EC) No 2533/98[28], ESCB members shall take all the necessary regulatory, administrative, technical and organisational measures to ensure the physical and logical protection of confidential statistical information. The ECB recalls that

27 See, for example, p. 27 of the ECB's Convergence Report 2014.

28 Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8).

confidential statistical information collected pursuant to Council Regulation (EC) No 2533/98 may only be used for the purposes defined in Article 8(1) of that Regulation, in particular for the exercise of the tasks of the ESCB and, as regards NCBs, in the field of prudential supervision or for other statutory NCB tasks.

6.5 Fourth, as stated in Opinion CON/2015/8, while Article 59(2) of Directive 2013/36/EU of the European Parliament and of the Council[29] and Article 84(5) of Directive 2014/59/EU of the European Parliament and of the Council[30] allow Member States to, under certain conditions, authorise the disclosure of certain information relating to the prudential supervision of institutions to parliamentary enquiry committees, courts of auditors and other entities in charge of enquiries in their Member State, such disclosure should not be made to the National Assembly per se. With regard to the amendments in the draft law to protect confidential information[31], additional safeguards for the exchange of confidential information with a parliamentary inquiry committee and the Court of Audit as referred to in Article 59(2) of Directive 2013/36/EU must always be observed: (a) the parliamentary enquiry committee and the Court of Audit must have a 'precise mandate' under national law; (b) the information must be 'strictly necessary' for fulfilling that mandate; (c) persons with access to the information are subject to professional secrecy requirements under national law that are at least equivalent to those referred to in Article 53(1) of Directive 2013/36/EU; (d) where the information originates in another Member State, it is not disclosed without the express agreement of the competent authorities that have disclosed it, and solely for the purposes for which those authorities gave their agreement; and (e) to the extent that the disclosure of information relating to prudential supervision involves processing of personal data, any processing by the parliamentary enquiry committee or the Court of Audit must comply with national law transposing Directive 95/46/EC of the European Parliament and of the Council[32]. Furthermore, the above conditions should be applied not only to information that is confidential under Directive 2013/36/EU but also to information that is confidential under other Union or national law provisions.

7. Amendments to the Banka Slovenije's staff status and other amendments

7.1 The draft law states that Banka Slovenije must prepare and implement a financial plan, employment and dismissal policy, and must use resources for salaries in accordance with the laws and regulations applicable for direct and indirect State budget users. While the ECB welcomes the fact that the preparation and implementation of the necessary plans are left to Banka Slovenije, the

29 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).

30 Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

31 Articles 26(4) and 47(2) of the Law on Banka Slovenije, as proposed under the draft law.

32 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p.31).

restrictions placed on Banka Slovenije's discretion by the laws and regulations in question raise concerns. As indicated in the ECB's convergence reports, Member States may not put their NCBs in a position where they have insufficient financial resources to carry out their ESCB-related tasks. Additionally, the principle of financial independence requires an NCB to have sufficient means not only to perform its ESCB-related tasks, but also its national tasks. Thus, the implementation of a financial plan in accordance with the applicable laws and regulations and its impact on Banka Slovenije's financial independence needs to be sufficiently addressed in the draft law.

7.2 Further, Member States may not impair an NCB's ability to employ and retain the qualified staff necessary for the NCB to perform independently the tasks conferred on it by the Treaty, the Statute of the ESCB and national legislation. Additionally, an NCB may not be put into a position where it has limited control or no control over its staff, or where the government of a Member State can influence its policy on staff matters[33]. In this regard, the ECB understands, in particular, that the laws and regulations applicable for direct and indirect State budget users impose strict limits on remuneration – through set salary structures and salary bands – which may entail a decrease in salaries for Banka Slovenije staff. Any amendment to the legislative provisions on the remuneration for members of an NCB's decision-making bodies and its employees should be decided in close and effective cooperation with the NCB, taking due account of its views, to ensure the ongoing ability of the NCB to independently carry out its tasks[34] and, hence, its financial independence. In addition, any changes that may affect the remuneration of Banka Slovenije's Governing Board members should, as a matter of principle and in order to ensure the independence of those members, apply only in respect of future appointments[35]. Similarly, any alteration to the remuneration of Banka Slovenije's Governing Board members that results from changes made pursuant to the Law on the public sector salary system should, again as a matter of principle, apply only in respect of future appointments.

7.3 The draft law also proposes that Banka Slovenije staff are to be subject to the laws and regulations governing public servants and, additionally, that such staff and Banka Slovenije's Governing Board members should be subject to the public sector salary system[36]. Since the proposed amendments withdraw Banka Slovenije's authority to determine the legal relationships and career policies for all categories of staff and transfer this authority to the government, the ECB considers them to reduce Banka Slovenije's independence. The ECB therefore recommends that sufficient safeguards be introduced, at least for example by providing that Banka Slovenije continues to autonomously regulate certain features of the legal relationships and career policies for all categories of staff, in order to ensure that Banka Slovenije's ability to carry out all its tasks, particularly its ESCB-related tasks, will not be affected.

7.4 Finally, the proposal that gives Banka Slovenije's Governor the possibility to dismiss the directors or deputy directors of its departments without providing any grounds is, in principle, a matter of

33 See Opinion CON/2008/9, Opinion CON/2008/10 and Opinion CON/2012/89.

34 The main opinions are CON/2010/42, CON/2010/51, CON/2010/56, CON/2010/69, CON/2010/80, CON/2011/104, CON/2011/106, CON/2012/6, CON/2012/86 and CON/2014/7.

35 See the ECB's Convergence Report June 2014, p. 23.

36 Currently, staff matters at Banka Slovenije are regulated with acts adopted by Banka Slovenije and in accordance with the Law governing employment relationships (see Article 42 of the Law on Banka Slovenije).

national law. Nevertheless, if adopted, the mere existence of such a possibility could have a negative impact on Banka Slovenije's efforts to attract qualified staff.

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

Done at Frankfurt am Main, 18 December 2015.

[signed]

The President of the ECB

Mario DRAGHI