

Yves Mersch
Member of the Executive Board

[COURTESY TRANSLATION¹]

mag. Dejan Židan
President of the National Assembly of Republic of Slovenia
Office of the President of the National Assembly of
Republic of Slovenia
Šubičeva ulica 4
SI-1102 Ljubljana

16 August 2019

Dear mag. Dejan Židan,

The European Central Bank (ECB) has been consulted and adopted three opinions on the draft law on judicial relief granted to former holders of qualified bank credit (see ECB Opinions CON/2017/16, CON/2017/41 and CON/2019/13). The ECB has also, in response to consultation requests from the Slovenian National Assembly, issued two opinions on other draft laws addressing the same subject-matter, or arising out of the same circumstances (see ECB Opinions CON/2019/20 and CON/2019/26). In its opinions the ECB made a number of observations, including in particular on the non-compliance with the prohibition of monetary financing of the requirement that Banka Slovenije must pay compensation for damages under the draft law, if this would result in Banka Slovenije assuming the liability of the Republic of Slovenia, and on the implications of this requirement for the financial independence of Banka Slovenije, due to the potential impact of the draft law on the Banka Slovenije's financial resources.

It has come to the attention of the ECB that, in the course of the legislative procedure before the National Assembly a number of amendments to the draft law have been proposed which have not yet been adopted. It is understood by the ECB that the draft law and the proposed amendments are likely to be further considered by the National Assembly in the course of September.

The ECB notes that *inter alia* an amendment has been proposed which prescribes the specific method by which Banka Slovenije's reserves are to be deployed for purposes of financing Banka Slovenije's obligation to pay damages under the draft law. The amendment provides that any surplus of Banka Slovenije during the period from 1 January 2019 until the decisions on compensation pursuant to the draft law become final that would remain after allocation to Banka Slovenije's special reserves would have to be allocated to special purpose reserves earmarked for the payment of compensation awarded in line with the draft law. If such special purpose reserves are insufficient for the payment of compensation, up to half of the general reserves of Banka Slovenije would be additionally used for such payments.

With regard to these latest amendments the ECB notes that the original draft law already envisaged that compensation would be financed out of Banka Slovenije's reserves, and that the ECB already provided observations on the compliance of this arrangement with the prohibition of monetary financing under

¹ The official ECB letter is addressed in the official language of the concerned Member State.

Article 123 of the Treaty on the Functioning of the European Union (TFEU) and with the financial independence of Banka Slovenije required under Article 130. Regarding compliance with the prohibition of monetary financing, the ECB noted that the draft law should establish liability arrangements which clarify that Banka Slovenije is not liable to pay compensation for damages in circumstances that would mirror the compensation foreseen under Directive 2014/59/EU² and Regulation (EU) No 806/2014³ to be paid from resolution financing arrangements to shareholders or creditors when a second independent valuation (carried out after resolution actions have been effected) determines that shareholders or creditors have incurred greater losses than they would have incurred under normal insolvency proceedings, as otherwise Banka Slovenije would de facto finance measures akin to resolution proceedings. Banka Slovenije may not finance a government task⁴. Regarding financial independence, the ECB noted in its third opinion on the draft law that Banka Slovenije's most recently reported reserves amount to EUR 908,827,000.00, and that, taking into account the worst-case scenario, Banka Slovenije could lose a significant amount of its reserves and as a consequence it may have a negative effect on the financial resources of Banka Slovenije and its financial independence⁵. In addition, in its second opinion to the National Assembly on a related draft law, the ECB noted that the impact of the draft law on the financial resources of Banka Slovenije and its financial independence should be carefully considered should there be a possibility that Banka Slovenije could lose a significant amount of its reserves due to compensation for damages to be paid under the draft law⁶.

The ECB appreciates that the National Assembly has consulted the ECB in the past on draft legislation and the ECB therefore trusts that the National Assembly will carefully consider the ECB's observations when preparing new version of the draft law. This letter should not be interpreted as the ECB inviting or advising the National Assembly, at this moment in time, to once again consult the ECB on the amendments of the draft law. The National Assembly should, however, consult the ECB again, in the event of future substantial amendments being made to the draft law.

Yours sincerely,

[signed]

Cc: mag. Boštjan Vasle, Governor, Banka Slovenije

² 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).

³ Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

⁴ See paragraph 2.1.2 of ECB Opinion CON/2019/13; paragraph 2.1.2 of ECB Opinion 2019/20.

⁵ See paragraph 2.2 of ECB Opinion CON/2019/13.

⁶ See paragraph 2.2 of ECB Opinion CON/2019/20.