



OPINION OF THE EUROPEAN CENTRAL BANK

of 15 November 2007

**at the request of the Slovenian Office for money laundering prevention
on a draft decree implementing Regulation (EC) No 1781/2006 of the European Parliament and of
the Council of 15 November 2006 on information on the payer accompanying transfers of funds
(CON/2007/36)**

Introduction and legal basis

On 24 October 2007, the European Central Bank (ECB) received a request from the Slovenian Office for money laundering prevention (hereinafter the 'Office') for an opinion on a draft decree implementing Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds (hereinafter the 'draft decree').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community 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 provisions¹, as the draft decree 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 decree

- 1.1 The purpose of the draft decree is to implement Regulation (EC) No 1781/2006. The draft decree: (i) establishes a list of offences that relate to the infringement of individual obligations under Regulation (EC) No 1781/2006; (ii) specifies the authorities responsible for monitoring implementation and taking decisions in offence proceedings; and (iii) provides for an exemption from Regulation (EC) No 1781/2006.
- 1.2 Pursuant to Article 2 of the draft decree, Banka Slovenije is responsible for monitoring implementation of Regulation (EC) No 1781/2006 and taking decisions with regard to the offences set out in the draft decree², with the exception of point 2 of Article 3(1) of the draft decree³ which

¹ OJ L 189, 3.7.1998, p. 42.

² See Articles 3 and 4 of the draft decree.

³ This relates to the case where a payment service provider fails to submit required information within three days of receiving a request from the Office.

falls within the scope of the Office's competence. By virtue of this provision, Banka Slovenije's powers are expanded to include new tasks related to the prevention of money laundering and terrorist financing (in addition to those already contained in the Law on the prevention of money laundering and terrorist financing⁴) and in particular as regards the imposition of sanctions in offence proceedings. In this context, the draft decree extends the range of entities subject to Banka Slovenije's supervision. Under the Law on payment transactions⁵, only legal persons may act as payment service providers⁶ and are therefore subject to Banka Slovenije's supervision. Since natural persons are covered by the definition of payment service provider in Article 2 of Regulation (EC) No 1781/2006, they would also fall within the scope of the Banka Slovenije's supervision.

2. General observations

- 2.1 The ECB would like to reiterate⁷ its commitment to contributing to the adoption, implementation and execution of measures preventing the use of the financial system for terrorist activities, as expressed in its public statement of 1 October 2001.
- 2.2 Without prejudice to the Governing Council's powers under Article 14.4 of the Statute of the European System of Central Banks and of the European Central Bank, the ECB considers that Bank Slovenije's new tasks referred to in paragraph 1.2 would not interfere with the objectives and tasks of the European System of Central Banks (ESCB). Nevertheless, these new tasks would be performed on the responsibility and liability of Banka Slovenije, and would not be regarded as being part of the ESCB's functions.
- 2.3 The ECB understands that the underlying reason for allocating the tasks referred to in paragraph 1.2 to Banka Slovenije is linked to its supervision of payment service providers. The ECB is of the opinion that monitoring implementation of Regulation (EC) No 1781/2006, as provided for under the draft decree, could further enhance the supervisory function.
- 2.4 Banka Slovenije will have to commit additional resources, both human and financial, to carrying out the tasks referred to in paragraph 1.2. In this context, the ECB has consistently emphasised that 'Member States may not put their NCBs in a position where they do not have sufficient financial resources to carry out their ESCB- or Eurosystem-related tasks, as applicable'⁸. Accordingly, the ECB expects that, when granting additional tasks to Banka Slovenije, due care will be taken to

⁴ *Zakon o preprečevanju pranja denarja in financiranja terorizma*, adopted on 22 June 2007, published in the Official Gazette No 60/2007.

⁵ *Zakon o plačilnem prometu*, adopted on 20 March 2002, published in the Official Gazette No 3/2002. The Law as last amended by the Law on banking (Official Gazette No 131/2006).

⁶ Article 3, point 8, in conjunction with Article 4 of the Law on payment transactions.

⁷ See ECB Opinion CON/2007/10 of 16 April 2007 on an amendment to the Law XV of 2003 on the prevention and combating of money laundering.

⁸ See e.g. the ECB's Convergence Report 2007, p. 19, available on the ECB's website at www.ecb.int.

ensure that it has sufficient financial and personnel resources, both in terms of quantity and quality, to carry out all its tasks, and in particular that its capacity to carry out its Eurosystem-related tasks will not be affected⁹.

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

Done at Frankfurt am Main, 15 November 2007.

[signed]

The President of the ECB

Jean-Claude TRICHET

⁹ See paragraph 3.3 of ECB Opinion CON/2007/29 of 5 October 2007 at the request of the Portuguese Ministry of Finance and Public Administration on a draft decree-law amending the legal framework of credit institutions and financial companies, paragraph 2.1 of ECB Opinion CON/2007/23 of 2 August 2007 at the request of Banca Națională a României on a draft law on non-banking financial institutions, and paragraph 3.2 of ECB Opinion CON/2007/17 of 18 June 2007 at the request of the Italian Ministry of Economic Affairs and Finance on a draft law on the regulation and supervision of markets and the functioning of the competent independent authorities.