



OPINION OF THE EUROPEAN CENTRAL BANK

of 27 July 2009

on public access to information on officials' wealth

(CON/2009/64)

Introduction and legal basis

On 1 July 2009 the European Central Bank (ECB) received a request from the President of the Slovenian Parliament for an opinion on a draft law on public access to information on officials' wealth (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 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 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

- 1.1 The draft law falls within the regulatory framework for the prevention of corruption in Slovenia and regulates the duty of officials to declare information on their wealth and public access to such information.
- 1.2 The purpose of the draft law, as stated in its explanatory memorandum, is to ensure transparency in the conduct of public officials and take precautionary measures in the field of corruption.

2. General observations

- 2.1 The ECB welcomes this consultation by the Slovenian Parliament. As the term 'officials', which is defined in Article 2 of the draft law, explicitly includes the Governor of Banka Slovenije and other high-ranking officials of Banka Slovenije, the draft law should be assessed from the perspective of compatibility with the principle of personal independence of the Governor and of other members of the Governing Board of Banka Slovenije.
- 2.2 The ECB has previously considered a similar draft law in Opinion CON/2008/43².

¹ OJ L 189, 3.7.1998, p. 42.

² All ECB opinions are available on the ECB website at www.ecb.europa.eu.

3. Declaration of wealth

- 3.1 Under the draft law, all officials, including the President of the Republic, Prime Minister, members of Parliament, ministers and judges are obliged to periodically provide the Slovenian Court of Audit with information on their personal wealth, e.g. income, real estate, securities and cash holdings³. In addition, they have to explain any increase in their wealth that exceeds the net salary payments they received since their previous declaration⁴. Such information will be made publicly available on the Court of Audit's website notwithstanding any restrictions as regards personal data protection and tax secrets⁵.
- 3.2 If an official fails to provide information on their wealth and income, the Court of Audit has the power to impose a fine under Article 13 of the draft law and order, under Article 8 of the draft law, that such official's salary is gradually reduced every month by one tenth, to the level of the minimum salary, until the official provides the requested information. Such Court of Audit's decision will be executed by the respective official's employer. Pursuant to Article 13(4) of the draft law, a fine will be imposed on an official in the amount of the value of undeclared wealth or of the wealth from unexplained sources, respectively, in addition to any fine imposed in accordance with Article 13(1) of the draft law.
- 3.3 The ECB understands that the possibility to reduce the salaries of members of Banka Slovenije's Governing Board will apply as a general sanction, equivalent to a fine, under the Slovenian legal system and will not interfere with the legal relationship between the central bank and its independent decision-making officials. Under this assumption, the sanction of salary reduction would not jeopardise the personal independence of Banka Slovenije officials as provided for in Article 108 of the Treaty and Article 7 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'), despite the fact that the sanction is linked to the salary of the Governor and the members of Banka Slovenije's Governing Board, provided that the ECB's understanding as follows is correct. The sanction of salary reduction is understood to be used to speed up the provision of information requested by the Court of Audit and it applies to all relevant officials in Slovenia, including the President of the Republic, the Prime Minister and members of the Slovenian parliament. Moreover, the sanction will be imposed by the Court of Audit, which is an independent body, and the conditions for the decision on the salary reduction (i.e. the grounds, amount and duration) as well as the legal remedy against such decision are clearly provided for in the draft law. Pursuant to Article 6(2) of the draft law, the Court of Audit shall communicate findings on unjustified increases of wealth to the body competent for electing or appointing the relevant official. In this respect, the ECB recalls that the dismissal of central bank Governors and other members of central bank decision-making bodies who are involved in the performance of ESCB-related tasks is subject to the provisions of Article 14.2 of the Statute of the ESCB. On the basis of the above assumptions and understanding,

³ See Article 4 of the draft law.

⁴ See Article 6 of the draft law.

⁵ See Article 7 of the draft law.

the ECB is of the opinion that the provisions of the draft law on wealth declarations and the related sanctions would not be incompatible with the principle of personal independence.

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

Done at Frankfurt am Main, 27 July 2009.

[signed]

The Vice-President of the ECB

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