



OPINION OF THE EUROPEAN CENTRAL BANK

of 9 July 2010

**on the provision of information and other obligations of Banka Slovenije
as payment service provider for budget users**

(CON/2010/55)

Introduction and legal basis

On 22 June 2010 the European Central Bank (ECB) received a request from the Slovenian Ministry of Finance for an opinion on a draft law on the provision of payment services to budget users (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 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 mainly governs the organisation and tasks of the Public Payments Administration of the Republic of Slovenia (hereinafter the 'PPA') and certain aspects of the functioning of the single treasury account system. The PPA's tasks are currently laid down in the Law on payment transactions², which was mostly replaced in 2009 by a new Law on payment services and systems³ implementing the Payment Services Directive⁴. Further rules are laid down in regulations adopted on the basis of the Law on payment transactions. According to the explanatory memorandum, the draft law does not introduce a new regime for the functioning of the single treasury account system or for the performance of payment transactions by 'budget users' (defined by the Law on public finance⁵ as State and municipal authorities and organisations, municipal administrations and public

¹ OJ L 189, 3.7.1998, p. 42.

² *Zakon o plačilnem prometu*, published in *Uradni list Republike Slovenije* No 30/2002.

³ *Zakon o plačilnih storitvah in sistemih*, published in *Uradni list Republike Slovenije* No 58/2009. The ECB issued Opinion CON/2009/27 on this Law. All ECB opinions are published on the ECB's website at www.ecb.europa.eu. Like Opinion CON/2009/27, the present opinion does not include any assessment of the implementation of directives in Slovenia.

⁴ Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007, p. 1).

⁵ *Zakon o javnih financah*, published in *Uradni list Republike Slovenije* No 79/1999.

funds, institutes and agencies established by the State or a municipality). Instead, the draft law transforms the key provisions of the existing regime governing the PPA's tasks into a functional whole.

- 1.2 The abovementioned single treasury account system is one of the characteristics of the system of public finance in Slovenia. There is one such single treasury account system for the State and one for each municipality, and it is composed of accounts opened with Banka Slovenije⁶. The maintenance and management of these accounts, however, is entrusted to the PPA. Several types of accounts are maintained within each single treasury account system, namely: treasury sub-accounts of the State and of municipalities, maintained for the management of funds of each single treasury account system; sub-accounts to which fiscal revenues are paid in; sub-accounts maintained for the provision of payment services to budget users, and other types of accounts foreseen by laws and other regulations⁷. In addition to maintaining these accounts, the PPA also collects and distributes all relevant information on payments to and from these accounts, maintains a register of budget users and performs other tasks assigned by law. The whole system, established in its current structure in 2003, is described in the draft law's explanatory memorandum as being effective in ensuring complete, up-to-date and accurate information on all transactions involving public funds in one place, thereby facilitating, among other things, the processing of the relevant data for budget, tax, statistical and other purposes and the supervision of the monetary flow to and from the budget.
- 1.3 Under conditions laid down in the Law on public finance or a regulation adopted by the Minister of Finance, budget users are authorised to open special-purpose transaction accounts (a category of payment accounts) directly with Banka Slovenije, for the purpose of the separate management of funds allocated to a specific programme or project. Pursuant to Article 23(3) of the draft law, Banka Slovenije provides to the PPA, free of charge, information on payments debited and credited to such accounts and on the amount of funds held on such accounts, while regulations adopted by the Minister of Finance define rules on the method and deadlines for this provision of information. Pursuant to Article 23(5), the Minister of Finance also lays down the terms for opening, maintaining and closing the accounts of budget users, and several other rules in connection with the payments to and from the system of public finance.

2. The appropriate time to consult the ECB

- 2.1 In its consultation request, the consulting authority asks for the ECB's opinion to be delivered as soon as possible, considering that the draft law is already in the parliamentary procedure. However, no explicit time limit for the submission of the opinion has been set. Since the date of receipt of the consultation request, further steps towards adoption of the draft law have been made in the Slovenian National Assembly, including the inclusion of several amendments to the draft law.

⁶ Article 61 of the Law on public finance.

⁷ See Article 23(1) of the draft law.

- 2.2 The ECB points out that, in cases of particular urgency which do not allow for a normal consultation period, the consulting authority may indicate urgency in the consultation request and ask for a shorter deadline for the ECB's opinion to be adopted. This does not prejudice the consulting authority's duty under Article 127(4) and 282(5) of the Treaty to consult the ECB on national draft legislative provisions falling within its fields of competence at an appropriate stage in the national legislation process, as stated in the second sentence of Article 4 of Decision 98/415/EC. This implies that the consultation should take place at a point in the legislative process which affords the ECB sufficient time to examine the draft legislative provisions and to adopt its opinion in all required language versions, and which also enables the relevant national authorities to take the ECB's opinion into consideration before the provisions are adopted. Article 3(4) of Decision 98/415/EC also obliges Member States to suspend the adoption process for draft legislative provisions, pending receipt of the ECB's opinion. As the draft law was submitted to the National Assembly of the Republic of Slovenia a month before the ECB received the consultation request⁸, this cannot be considered as a case of extreme urgency within the meaning of Article 3(2) of Decision 98/415/EC and it was also not indicated as such in the consultation request. In the absence of an explicit deadline for the submission of its opinion, but taking into account the consulting authority's request for it to deliver an opinion as soon as possible, the ECB decided to apply the minimum one-month deadline provided in Article 3(1) of Decision 98/415/EC.
- 2.3 The opportunity to issue an opinion on a draft law allows the ECB to express its views on the substance of the proposed legislation. The ECB reiterates its position that even cases of particular urgency do not relieve national authorities from their duty to consult the ECB and to allow sufficient time to take into account its views in accordance with Decision 98/415/EC. Any substantive amendments to the draft law have to be submitted to the ECB in order to allow it to issue its opinion based on the most recent text. Furthermore, with respect to the present consultation, the process of adoption of the draft law should have been suspended. The ECB's comments on the provisions on which it was consulted do not eliminate the breach of the obligation to consult it. The ECB would appreciate the Ministry of Finance's giving due consideration to honouring its obligation to consult the ECB in the future.

3. Obligations of Banka Slovenije as service provider

3.1 Requirements for the provision of information

- 3.1.1 Article 21.2 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB') establishes that the 'ECB and national central banks may act as fiscal agents' for 'Union institutions, bodies, offices or agencies, central governments, regional local or other public authorities, other bodies governed by public law, or public undertakings of Member States.' This is reflected in Article 12 of the Law on Banka Slovenije⁹,

⁸ The draft law was submitted to the National Assembly on 20 May 2010, while the relevant consultation request was received by the ECB on 22 June 2010.

⁹ *Zakon o Banki Slovenije*, published in *Uradni list Republike Slovenije*, No 72/2006.

according to which Banka Slovenije may act as a payment and/or fiscal agent for the State and maintains accounts for the Republic of Slovenia, State bodies and public entities. Pursuant to Article 53 of the same Law, Banka Slovenije lays down the tariff for remuneration of the services it provides. The opening of special-purpose transaction accounts of budget users with Banka Slovenije, as referred to in Article 23(2) of the draft law, falls within the existing tasks of Banka Slovenije, for the provision of which the latter should be able to charge appropriate fees.

3.1.2 Article 23(3) of the draft law obliges Banka Slovenije to provide to the PPA information on payments debited and credited to such accounts and on account balances free of charge. In addition, the draft law authorises the Minister of Finance to independently prescribe the method and deadlines for such provision of information, while it does not provide any further guidelines in this respect. The requirements laid down by the Minister might expose Banka Slovenije to a considerable burden, as they could have an impact on its internal procedures and information systems and, consequently, could require additional human and financial resources. In order to protect the financial independence of Banka Slovenije, the availability of such additional resources should be ensured in order not to affect Banka Slovenije's capacity to carry out its European System of Central Banks (ESCB)-related tasks. Additionally, as noted in the ECB's convergence reports, the principle of financial independence requires a national central bank to have sufficient means not only to perform its ESCB-related tasks but also its national tasks (e.g. financing its administration and own operations)¹⁰.

3.1.3 Furthermore, the ECB recommends defining in more detail the scope of the relevant obligations of Banka Slovenije, in order to ensure certainty as regards its tasks. Also, the involvement of Banka Slovenije in the preparation or adoption of the Minister's act (e.g. through giving its consent) might be considered to ensure that its provisions are feasible and to optimise them.

3.2 *Other requirements prescribed by the Minister of Finance*

3.2.1 Pursuant to Article 23(5) of the draft law, the Minister of Finance prescribes, among other things, the terms for opening, maintaining and closing the accounts of budget users, the content, method and deadlines for the provision of information by payment service providers on payments debited and credited to the accounts of budget users, the obligatory content of instructions for the payment of fiscal revenues as well as rules on the provision of other information in connection with the relevant payment transactions.

3.2.2 It is not clear from the draft law whether (or to what extent) such rules would also apply to the accounts maintained by Banka Slovenije or otherwise impose additional obligations on Banka Slovenije. Should this be the case, it seems unusual that the Minister of Finance, as a customer, defines the terms and condition for the accounts and services provided by Banka Slovenije. The draft law should respect the provisions of Article 27 in conjunction with Article 12 of the Law on Banka Slovenije whereby such terms and conditions are established by an agreement between Banka Slovenije and the Ministry of Finance. More importantly, taking into account the express

¹⁰ See e.g. the ECB's Convergence Report of May 2010, p. 21.

recognition in Article 21.2 of the Statute of the ESCB of the provision of fiscal agency services as a legitimate function traditionally performed by central banks¹¹, the ECB notes that provision by central banks of fiscal agency services should comply with the monetary financing prohibition laid down in Article 123 of the Treaty by not constituting central bank financing of public sector obligations vis-à-vis third parties¹² or central bank crediting of the public¹³. In this respect, the ECB recalls that it is essential to make explicit that any remuneration of the account held by the budget users with Banka Slovenije will reflect market parameters. In particular, it is important to correlate the remuneration rate of the deposits with their maturity. As recalled in past ECB opinions¹⁴, the prohibition on monetary financing by central banks of government activities is independent of its form, i.e. loans or other direct financial means (e.g. the provision of direct, non-reimbursable funding to the public sector) are covered by the prohibition. Interest payments above market rates constitute a de facto advance distribution of profits. This, in turn, implies a de facto intra-year credit, contrary to the objective of the monetary financing prohibition. Therefore, the remuneration of deposits of public entities should not go beyond the remuneration applied to a similar deposit made by a market counterparty. If the remuneration mechanism for deposits of public entities allows the Government to systematically steer the remuneration by an NCB at a rate above the rate at which a similar deposit would be remunerated by a market counterparty, this would contravene the objectives of the monetary financing prohibition under the Treaty.

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

Done at Frankfurt am Main, 9 July 2010.

[signed]

The President of the ECB

Jean-Claude TRICHET

¹¹ See the ECB's Convergence Report of May 2010, p. 25, which states that 'The purpose of Article 21.2 of the Statute was to enable NCBs, following transfer of the monetary policy competence to the Eurosystem, to continue to conduct the fiscal agent service traditionally provided by central banks to governments and other public entities without automatically breaching the monetary financing prohibition.'

¹² See Article 1(1)(b)(ii) of Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 [now 123] and 104b(1) [now 125(1)] of the Treaty (OJ L 332, 31.12.1993, p. 1).

¹³ See also ECB Opinion CON/2009/23, paragraph 2.2.

¹⁴ See in particular ECB Opinions CON/2008/10 and CON/2009/69.