



EUROPEAN CENTRAL BANK  
EUROSYSTEM

**OPINION OF THE EUROPEAN CENTRAL BANK**  
**of 26 January 2011**  
**on amendments to the Law on banking**  
**(CON/2011/3)**

**Introduction and legal basis**

On 21 December 2010, the European Central Bank (ECB) received a request from the National Assembly of the Republic of Slovenia for an opinion on a draft law amending the Law on banking (hereinafter the ‘draft law’). On 14 January 2011, the National Assembly notified the ECB of amendments to the draft law submitted by the Slovenian Government.

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 and sixth indents 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 provisions<sup>1</sup>, as the draft law relates to Banka Slovenije and to rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. 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 As stated in the consultation request, the main aim of the draft law is to address conflicts of interests of: (a) members of the management and supervisory boards of Slovenian commercial banks; and (b) members of the management and supervisory boards of financial institutions that conduct business abroad in which Slovenian banks have controlling interest. To this end, the draft law contains solutions to ensure that banks conduct their business in accordance with the Slovenian Corporate Governance Code<sup>2</sup> and disclose information on all (direct and indirect) business contacts of supervisory board members within the bank under their supervision and with the bank’s subsidiaries. Pursuant to the draft law, Banka Slovenije should define criteria on what constitutes significant business contacts.
- 1.2 According to the proposed Government amendments to the draft law, the references in Articles 2 and 3 of the draft law to ‘the Corporate Governance Code’ would be replaced with ‘the highest ethical standards for governance, taking account of conflicts of interests’. The Government also proposes amending Article 4 of the draft law to cover the duty of disclosing information to ‘all

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<sup>1</sup> OJ L 189, 3.7.1998, p. 42.

<sup>2</sup> Available on the Slovenian Directors’ Association website at [www.zdruzenje-ns.si](http://www.zdruzenje-ns.si).

significant direct and indirect business contacts that management and supervisory board members as well as their close family members had with the bank or its subsidiary'. Further, with respect to the duty to disclose information on compliance with legal acts, other rules and internal acts governing conflicts of interests, it is clarified that conflicts of interests concerned refer to management and supervisory board members of subsidiary financial companies with their seat located outside Slovenia.

## **2. General observations**

- 2.1 The ECB broadly welcomes that the draft law is aimed at addressing conflicts of interests within financial institutions, which was one of the factors contributing to the global financial crisis.
- 2.2 In accordance with Article 2 of the draft law, members of the bank's management board must ensure that the bank's operations are consistent with the provisions of the Corporate Governance Code. Further, in accordance with Article 3 of the draft law, members of the bank's supervisory board have the duty to implement provisions of the Corporate Governance Code. The ECB emphasises the existing work undertaken at Union level on corporate governance<sup>3</sup> and draws the consulting authority's attention to the importance of ensuring that the draft law is in line with Union legislation. Possible conflicts with future Union legislation on these issues might be avoided if the draft law refrains from specifically referring to the Corporate Governance Code. In this respect, the ECB supports the Government amendments where reference is broadly made to ethical standards for governance.
- 2.3 The ECB notes the provision of Article 4a of the draft law added by the Government amendments that allows three months following the entry into force of the changes for Banka Slovenije to bring its legal acts in line with the amended Law on banking.

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

Done at Frankfurt am Main, 26 January 2011.

[signed]

*The Vice-President of the ECB*

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<sup>3</sup> See Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (OJ L 177, 30.6.2006, p. 1); European Commission's Green Paper 'Corporate Governance in financial institutions and remuneration policies' (COM(2010) 284 final) of 2 June 2010 available on the European Commission's website at [www.ec.europa.eu](http://www.ec.europa.eu); and the following Committee of European Banking Supervisors documents: 'Guidelines on the Application of the Supervisory Review Process under Pillar 2' of 25 January 2006, 'Consultation paper on the Guidebook on Internal Governance' of 13 October 2010, and 'Guidelines on Remuneration Policies and Practices' of 10 December 2010 which are all available on the European Banking Authority's website at [www.eba.europa.eu](http://www.eba.europa.eu).