



EUROPEAN CENTRAL BANK
EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK
of 27 April 2011
on amendments to the rules on the register of financial assets
(CON/2011/40)

Introduction and legal basis

On 4 April 2011, the European Central Bank (ECB) received a request from the Slovenian Ministry of Finance for an opinion on a draft law amending the Law on Banka Slovenije (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 and fifth 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 provisions¹, as the draft law contains provisions referring to Banka Slovenije and payment and settlement systems. 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 amends Chapter 4.2.a of the Law on Banka Slovenije² which governs the register of financial assets. Banka Slovenije maintains the register of credit claims and other financial assets which can be used as collateral for liabilities to Banka Slovenije, the ECB and the national central banks of the European System of Central Banks (hereinafter collectively referred to as the ‘relevant central banks’). The register contains details on financial assets and financial collateral rights on these assets of the relevant central banks. The information which the register contains as to (a) the unique identifier allocated to particular financial assets; and (b) whether financial collateral is registered, is publicly available. Entering financial assets onto the register gives notice of any registered financial collateral rights over such assets. If a creditor has acquired financial collateral rights in good faith as regards third-party rights over financial assets and these rights have been entered on the register, such creditor will have priority ranking in any repayment from the collateral proceeds, irrespective of any prior third-party rights in existence.
- 1.2 The main objective of the draft law is to align the abovementioned rules on the register of financial assets with Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit

¹ OJ L 189, 3.7.1998, p. 42.

² *Zakon o Banki Slovenije*, the official consolidated version published in *Uradni list RS* No 72/06.

claims³. In line with the requirement of Directive 2009/44/EC⁴, the draft law amends the current rules pursuant to which financial collateral over registered financial assets is created by means of an entry on the register. However, in future the register is only planned to serve as a record of financial collateral established over registered financial assets.

- 1.3 In addition, the draft law⁵ broadens the tasks of Banka Slovenije related to the administration of the register of financial assets. Banka Slovenije should: (a) provide interested persons, upon request, with information as to whether financial collateral in favour of the relevant central banks has been established over assets that can be used as collateral for liabilities to the said entities; and (b) receive notifications of the establishment of collateral over such assets from third party collateral takers.

2. General observations

The ECB welcomes the intention of the draft law to remove the formal condition for the creation of financial collateral over financial assets that can be used for securing liabilities to relevant central banks. It is anticipated that the provision of the draft law under which Banka Slovenije provides other potential collateral takers with information on financial collateral established in favour of the relevant central banks as well as receiving information on collateral established on registered financial assets will increase legal certainty where financial assets are used for collateral purposes.

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

Done at Frankfurt am Main, 27 April 2011.

[signed]

The President of the ECB

Jean-Claude TRICHET

³ OJ L 146, 10.6.2009, p. 37.

⁴ Article 2(6)(a) of Directive 2009/44/EC.

⁵ Proposed new paragraph 1.a of Article 22.e of the Law on Banka Slovenije.