



**OPINION OF THE EUROPEAN CENTRAL BANK**  
**of 18 June 2012**  
**on prevention of late payments**  
**(CON/2012/47)**

**Introduction and legal basis**

On 24 May 2012, the European Central Bank (ECB) received a request from the Slovenian Ministry of Finance for an opinion on a draft law on prevention of late payments and on 12 June 2012 the ECB received an amended version of the draft law from the consulting authority (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 provisions<sup>1</sup>, 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 regulates measures to prevent late payments as part of the Government’s efforts to improve economic and business conditions for small and medium size enterprises. The ECB understands the draft law is intended to replace the Law on prevention of late payments<sup>2</sup> which was subject to previous ECB consultations<sup>3</sup>.
- 1.2 The draft law defines payment periods and the duty to register money obligations for mandatory multilateral netting applicable to contracts concluded between economic operators or between economic operators and public authorities, where one party provides goods or services and the other party fulfils a money obligation. The draft law does not apply where insolvency proceedings have been initiated against a debtor pursuant to the law governing insolvency proceedings<sup>4</sup>.
- 1.3 To accelerate repayment of debts and to protect creditors, the draft law introduces a document (‘*izvršnica*’) through which a debtor undertakes to pay the amount stated in it. It is deemed to contain: (a) the debtor’s irrevocable authorisation to the creditor to order the execution of a

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

<sup>2</sup> Official Gazette of the Republic of Slovenia No 18/11.

<sup>3</sup> See Opinions CON/2011/25 and CON/2011/61. All ECB Opinions are published on the ECB’s website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>4</sup> See Article 3 of the draft law.

payment transaction by debiting the debtor's funds with the debtor's payment services provider; and (b) the debtor's irrevocable consent to all its payment services providers to execute the payment transaction ordered by the creditor by debiting the debtor's funds<sup>5</sup>.

- 1.4 The draft law is also intended to transpose Directive 2011/7/EC of 16 February 2011 on combating late payment in commercial transactions<sup>6</sup> as regards defining payment periods and the moment of late payment<sup>7</sup> into the Slovenian legal order.
- 1.5 In accordance with Article 1(2) of Decision 98/415/EC, the ECB is not providing its opinion on the transposition of Directive 2011/7/EC and it limits its views to the impact of the draft law on Banka Slovenije.

## 2. Independence of Banka Slovenije

### *Application of the draft law to Banka Slovenije's contractual relations*

- 2.1 The draft law applies to public authorities, which include Banka Slovenije<sup>8</sup> as regards its contractual relations in the area of administration, in particular. Article 5 of the draft law clarifies that the draft law does not apply to Banka Slovenije when it acts within the scope of its exclusive competences in accordance with the law governing Banka Slovenije or any other laws or European Union regulations laying down exclusive competences of Banka Slovenije and the competences of Banka Slovenije as an integral part of the European System of Central Banks (ESCB). The ECB welcomes this clarification as it ensures that the draft law does not interfere with the tasks of the ESCB and the Eurosystem carried out by Banka Slovenije in accordance with the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'), in particular the implementation of the monetary policy of the Union. As recommended in the ECB's previous opinions<sup>9</sup>, for the sake of clarity, the draft law could be further improved by making an additional reference to Banka Slovenije's competences as part of the Eurosystem.

### *Supervision of the implementation of the draft law*

- 2.2 Article 55 of the draft law defines which national authorities<sup>10</sup> supervise the implementation of Articles 31 and 35 of the draft law<sup>11</sup> and initiate minor criminal offences proceedings for related breaches of the draft law. Under the draft law, Banka Slovenije is also subject to this supervision. As emphasised in previous ECB opinions<sup>12</sup>, in order to fully respect central bank independence, it

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<sup>5</sup> See Part VI of the draft law (Articles 39 to 53) for more details.

<sup>6</sup> OJ L 48, 23.2.2011, p. 1.

<sup>7</sup> See Part II of the draft law (Articles 10 to 13) for more details.

<sup>8</sup> See Article 6 of the draft law.

<sup>9</sup> See paragraph 3.1 in Opinion CON/2011/25 and paragraph 3.1 in Opinion CON/2011/61.

<sup>10</sup> The Customs Authority of the Republic of Slovenia, the Tax Administration of the Republic of Slovenia and the Market Inspectorate of the Republic of Slovenia.

<sup>11</sup> I.e. the obligation to register money obligations in a multilateral netting system and the mandatory registration of money obligations from bills of exchange for multilateral netting.

<sup>12</sup> See paragraph 3.3 in Opinion CON/2011/25 and paragraph 3.2.2 in Opinion CON/2011/61.

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should be made clear that any supervision of Banka Slovenije's compliance with the draft law should observe its status as an independent central bank as granted by the Treaty and the Statute of the ESCB.

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

Done at Frankfurt am Main, 18 June 2012.

[signed]

*The President of the ECB*

Mario DRAGHI