EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 20 July 2012

on the Slovenia Sovereign Holding

(CON/2012/57)

Introduction and legal basis

On 13 July 2012, the European Central Bank (ECB) received a request from the Slovenian Ministry of Finance for an opinion on a draft law on the Slovenia Sovereign Holding (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 sixth 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[1], as the draft law relates 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 The main purpose of the draft law is to establish the Slovenia Sovereign Holding (SSH) which will be charged with managing all investments of the Republic of Slovenia. Concentrating all State investments at one managing entity allows active management of the investments and a consistent corporate management system. Consequently, the value of the investments is expected to increase. The draft law: (a) simplifies the management structure; (b) defines more clearly the intention and criteria of State investment management; and (c) creates a single State asset reserve.

1.2 Article 29 of the draft law provides that the SSH or its subsidiary may acquire and manage assets transferred within restructuring programmes by the banks to the SSH or its subsidiary against consideration. In this context: (a) all ancillary rights, such as rights to privileged repayment, mortgage, pledge, rights arising from the contract with the guarantor, rights to interest, penalties, and other ancillary rights provided by law, pass to the SSH on the transfer of assets; (b) all bank assets acquired on the basis of an enforced ancillary right referred to in point (a) prior to the transfer of a bad claim are also transferred to the SSH on the transfer of assets; (c) the SSH may acquire investments as capital instruments, including hybrid convertible instruments, issued by banks and taken into account in calculation of the bank's own funds in accordance with laws and

1 OJ L 189, 3.7.1998, p. 42.

regulations and may recapitalise banks with monetary or non-monetary contributions. The consideration for the purchase of the banks' assets may be either monetary or non-monetary in the form of financial instruments whose holder or, respectively, issuer is the SSH or its subsidiary. The SSH or its subsidiary may issue State-guaranteed bonds and take State-guaranteed loans to finance the purchase of the banks' assets. Bonds issued by the SSH or its subsidiary for the purpose of financing the purchase of the banks' assets may be paid in by transferring assets which are being purchased to the SSH or its subsidiary. The Government may adopt a regulation specifying the manner in which the assets are transferred to the SSH and the manner in which the activities referred to in this paragraph are performed.

2. Duty to consult the ECB

2.1 The Slovenian government endorsed the draft law on 12 July 2012 and submitted it to the Parliament for adoption in an extraordinary session of the Slovenian Parliament on 18 to 20 July 2012. The Ministry requested the ECB to deliver its opinion as soon as possible which effectively means that the ECB has been given an extremely short deadline of three to five working days. The ECB would like to draw the Ministry's attention to the proper procedure for its consultations as set out below[2].

2.2 The second sentence of Article 4 of Decision 98/415/EC provides that the ECB must be consulted 'at an appropriate stage' in the legislative process. 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 where necessary translate them, 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. Where draft legislative provisions are prepared by an authority other than the adopting authority, it can be derived from Article 4 of Decision 98/415/EC that consultation on such provisions must take place at a time which enables the authority initiating the draft legislative provisions to consider whether they should be amended in order to accommodate the ECB's opinion, i.e. before transmission of the provisions to the adopting authority. The timetable should also factor in a reasonable period for the ECB to examine the consultation dossier and deliver its opinion. Article 4 does not preclude national authorities from taking steps in accordance with their legislative procedures that do not affect the substance of the draft legislative provisions.

2.3 It follows from the wording of Article 3(4) of Decision 98/415/EC that Member States are obliged to suspend the process for adoption of the draft legislative provision pending submission of the ECB's opinion. This does not mean that the whole national legislative process, for example, preparatory work of parliamentary standing committees, discussion of other opinions submitted by national authorities, etc. should be suspended pending delivery of the ECB's opinion. Rather it

2 See Title IV, Section I of the Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions, available on the ECB's website at www.ecb.europa.eu.

means that the adopting authority has to have the opportunity to deliberate meaningfully the ECB's opinion prior to taking its decision on the substance. If a time limit has been set for submission of the ECB opinion and this time limit has expired, the national authority concerned may restart the adoption process. But even in such a case, and as long as the legislation has not yet been adopted, the national authorities continue to be obliged to take the ECB's opinion into consideration.

3. Consultation on the implementing regulations

The ECB takes note of the Slovenian authorities' endeavours to help banks in difficulties by transferring their bad claims to the SSH. The ECB understands that Article 29 of the draft law is only the basic provision enabling such transfer whereas the detailed rules on the asset transfer and the SSH's activities in this respect will be set out in an implementing regulation to be adopted by the Government[3]. Such implementing rules are of great interest to the Eurosystem, for example as regards the possible role of Banka Slovenije, the price at which assets are transferred to the SSH and the SSH's investment strategy. Taking due account of the ECB's fields of competence, the ECB invites the Slovenian authorities to duly consult it on any such implementing regulations.

4. Role of Banka Slovenije

Banka Slovenije as the banking supervisor should be involved in any procedure identifying the banks transferring their bad claims to the SSH as well as identifying and defining the value of the assets to be transferred to the SSH. The ECB would therefore suggest explicitly providing for an appropriate role of Banka Slovenije, either in the draft law or in any other relevant legal act.

5. Value at which banks' assets are transferred to the SHH or its subsidiary

In accordance with Article 29 of the draft law the SSH or its subsidiary may acquire banks' assets as part of restructuring programmes. Although the draft law does not provide any details about their valuation, the ECB emphasises the importance of assets being transferred at their real economic value. Bad claims should usually be purchased at market value. Using public resources to purchase assets at relatively high prices from a bank under resolution may be a hidden subsidy and bail out private shareholders or creditors and may conceal the real cost of recapitalisation. It may also provide incentive to banks to sell to the SSH a greater portion of their assets than justified.

6. Transfer of interest accrued on bank assets transferred to the SSH

In accordance with the second indent of the first paragraph of Article 29 of the draft law, all bank's assets acquired on the basis of an enforced ancillary right prior to the transfer of a bad claim are also transferred to the SSH together with the transfer of assets. This implies that, in addition to the bad claim itself, also all interest accrued prior to the transfer of the bad claim to the SSH, including the interest accrued in the

3 See the third paragraph of Article 29 of the draft law.

course of the regular repayment of the bank claim, should be transferred to the SSH. Such provision would thus apply in arrears and could also refer to assets that have perhaps already been disposed of. It would also not be in line with the intention of the asset transfer under the draft law to reduce the burden on banks with bad claims. Taking the above into account, the ECB would recommend revisiting this provision.

7. Bank recapitalisation by the SSH

In accordance with the third indent of the first paragraph of Article 29 of the draft law, the SSH may recapitalise banks with cash or non-cash contributions. As consistently expressed in its opinions[4], the ECB generally prefers issuances of shares against a cash contribution for financial stability reasons. It should also be noted that recapitalisation against non-cash contributions may in this case be carried out only if the bank share capital increase is based on an additional measure of Banka Slovenije[5].

8. SSH bonds

In accordance with the second paragraph of Article 29 of the draft law, the SSH or its subsidiary may issue State-guaranteed bonds to finance the purchase of the banks' assets. Bonds issued by the SSH or its subsidiary for the purpose of financing the purchase of the banks' assets can be paid in by transferring assets being purchased to the SSH or its subsidiary. Such investment in banks of the State-owned SSH's bonds is not desirable from the financial stability perspective as it reinforces the link between the State and the banking sector.

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

Done at Frankfurt am Main, 20 July 2012.

[signed]

The Vice-President of the ECB

Vítor CONSTÂNCIO

4 See paragraph 2.2 of Opinion CON/2012/23 and in the context of consultations by Slovenia paragraph 4.1.2 of Opinion CON/2012/48. All ECB Opinions are available on the ECB's website at www.ecb.europa.eu.

5 See Article 43(8), point 2 of the Law on banking.