



## **OPINION OF THE EUROPEAN CENTRAL BANK**

**of 19 September 2012**

**on strengthening bank stability**

**(CON/2012/71)**

### **Introduction and legal basis**

On 11 September 2012, the European Central Bank (ECB) received a request from the Slovenian Ministry of Finance for an opinion on a draft law on Slovenia's measures to strengthen bank stability (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 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 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 draft law regulates the Bank Assets Management Company (BAMC), the Bank Stability Fund (hereinafter the 'Fund') and measures to strengthen the stability of banks in Slovenia. The main purpose of the BAMC and the Fund is to strengthen the stability of banks in order to maintain the stability of the financial system as a whole. The BAMC and the Fund are established to:
  - (a) minimise the costs of measures under the draft law, (b) recover taxpayers' funds, (c) accelerate lending to the non-financial sector, (d) contribute to bank privatisation, and (e) clarify responsibility for the bank bad claims.
- 1.2 The BAMC is a joint-stock company fully owned by the State. For the purposes of the stabilisation measures under the draft law, it establishes and manages the Fund. The Fund does not have legal personality and the BAMC carries out tasks on its behalf. Under the measures in the draft law, the BAMC may, on behalf of the Fund, acquire or by any other means cover risk positions, in particular receivables, securities, derivatives, rights and obligations under approved credits or guarantees and company shares, in each case together with the pertaining collateral, acquired by financial institutions before 1 September 2012. The claims are transferred to the Fund at a price

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

reflecting their real long-term economic value. The BAMC and the Fund are established for the period until 31 December 2017. Thereafter their assets, rights and obligations will be transferred to the Slovenian Restitution Fund or its legal successor, the Slovenia Sovereign Holding.

- 1.3 Measures to strengthen the stability of banks provided for by the draft law are: (a) State guarantees up to a total amount of EUR 4 billion issued for the liabilities acquired by the BAMC and the Fund and the liabilities of special purpose vehicles established by banks to assume their risks; and (b) as a subsidiary measure, bank recapitalisation by way of the Fund acquiring bank shares or other own funds components. An interministerial commission decides on the measures on a proposal by the BAMC considering the importance of a particular bank for financial stability, the urgency of the measure and the efficient use of the Fund's funds. Banks drawing on the measures have to ensure a solid and prudent business policy and prepare a business strategy to be assessed by the abovementioned interministerial commission. The BAMC can impose limitations as regards management remuneration and benefits and the distribution of dividends and other shareholders' rights in such banks.

## **2. Duty to consult the ECB**

The draft law is scheduled to be discussed by the Slovenian Government on 20 September 2012. The Ministry requested the ECB to deliver its opinion as soon as possible, which effectively means that the ECB has been given a very short deadline of six working days. The ECB would like to draw the Ministry's attention to the proper procedure for its consultations, in particular the requirement to afford the ECB sufficient time to prepare its opinion<sup>2</sup>.

## **3. Consultation on the implementing acts**

The ECB understands that the draft law only serves as the basis for the operations of the BAMC and the Fund and for the implementation of measures for strengthening bank stability in Slovenia. More detailed rules will be set out in implementing acts to be adopted by the Government. Such implementing rules are of great relevance to the Eurosystem, for example as regards the price at which claims are transferred to the Fund and the Fund's investment strategy and policy. Taking due account of the ECB's fields of competence, the ECB invites the Slovenian authorities to consult it on any such implementing acts. The Slovenian authorities should ensure that requests to the ECB to issue an opinion on the implementing acts are in sufficient time to be compatible with the deadline stipulated by the draft law for the adoption of Government implementing acts (one month following the entry into force of the draft law).

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<sup>2</sup> See the Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions. All ECB opinions and the Guide are available on the ECB's website at [www.europa.eu](http://www.europa.eu). In the context of recent consultations by Slovenia also referred to in Opinion CON/2012/57 and Opinion CON/2012/48.

#### **4. Role of Banka Slovenije**

- 4.1 Banka Slovenije is involved in the activities provided for in the draft law to a limited extent: (a) it has a consultative role in adopting the Statute of the BAMC and imposing limitations on banks drawing on the measures under the draft law, (b) it has the right to propose one of four non-executive members of the Management Board of the BAMC, (c) the BAMC can refer to it for the purpose of carrying out its activities, as regards the competences under the Law on banking, and (d) its representative is one of seven members of the interministerial commission deciding on the measures under the draft law.
- 4.2 Banka Slovenije as the banking supervisor should be more actively involved in the activities of the BAMC, in particular in any procedure identifying the banks drawing on the measures under the draft law as well as identifying and defining the value of the assets to be transferred to the Fund. The draft law could clarify how the measures under the draft law fit into the system of supervisory measures taken by Banka Slovenije within its supervisory competence pursuant to the Law on banking. 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<sup>3</sup>.

#### **5. Bank recapitalisation by the Fund and eligibility of bonds issued by the BAMC as collateral in Eurosystem operations**

- 5.1 In accordance with Article 20 of the draft law, the Fund can participate in the recapitalisation of banks, in particular by acquiring shares and taking over other own funds items. The Ministry decides on the acquisition and disposal of shares.
- 5.2 As consistently expressed in its opinions<sup>4</sup>, the ECB generally prefers issuances of shares against a cash contribution for financial stability reasons. 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<sup>5</sup>. Such investment in banks of the bonds issued by the State-owned BAMC is not desirable from the financial stability perspective as it reinforces the link between the State and the banking sector.
- 5.3 In accordance with Article 10 of the draft law, the BAMC may issue bonds and other financial instruments guaranteed by the State to finance the purchase of bank bad claims. Such bonds and other financial instruments can be paid by a transfer of bank claims to the Fund and according to the draft law, they should comply with the ECB's conditions for financing of financial institutions.
- 5.4 The draft law does not fully exclude the bonds and financial instruments issued by the BAMC from being used for the purpose of recapitalisation of banks. As stated in previous ECB opinions<sup>6</sup>, where a recapitalisation of a credit institution to restore its solvency takes place by way of direct

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<sup>3</sup> This view has already been provided in paragraph 4 of CON/2012/57.

<sup>4</sup> 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 and paragraph 7 of opinion CON/2012/57.

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

<sup>6</sup> See e.g. Opinion CON/2012/64.

placement of State-issued debt instruments, the subsequent use of such bonds or financial instruments as collateral in central bank liquidity operations would raise monetary financing concerns in the absence of any alternative market-based funding sources for such State-issued debt instruments. The same concerns would arise should the bonds and financial instruments issued by the BAMC<sup>7</sup> be used for the bank recapitalisation.

- 5.5 As regards the provision of the draft law that financial instruments issued by the BAMC will meet the ECB's conditions for financing of financial institutions<sup>8</sup>, the ECB understands that the BAMC is under an obligation to shape the instruments it issues to meet the requirements for eligible collateral for Eurosystem monetary policy operations<sup>9</sup>. The ECB emphasises that it is the prerogative of the Eurosystem to decide whether collateral fulfils the criteria of its collateral framework on the basis of any information it may consider relevant.

## 6. Fiscal implications of the draft law

- 6.1 The draft law provides for various sources of funding, including bond issuance, Government deposits with banks and State borrowing<sup>10</sup>. In accordance with Article 12 of the draft law, the State can borrow additional funds to finance the Fund notwithstanding the provisions of the Law on public finance. The draft law, however, does not define under which circumstances and by how much the State is entitled to borrow additional funds. Thus, the draft law could imply significant fiscal costs, although the draft law *inter alia* aims at 'minimising the costs of measures' and 'recovering taxpayers' funds'<sup>11</sup>.
- 6.2 In this context, it should be also specified how to value the transferred claims to the Fund<sup>12</sup> and whether a discount factor will be applied, as this determines the required funding and the potential fiscal costs.
- 6.3 In addition, to limit the potential fiscal implications the draft law could set out limits regarding the recapitalisation of banks in which the Fund could also participate<sup>13</sup>. While a limit exists for State guarantees<sup>14</sup>, the involvement in bank recapitalisation is not limited.

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<sup>7</sup> According to the draft law, the BAMC is a joint-stock company fully owned by the State. The functions and powers of its Assembly are exercised by the Government. The Republic of Slovenia is liable for all obligations of the BAMC arising from the performance of activities under the draft law. The BAMC is subject to legal and technical supervision by the Ministry of Finance. The Statute of the BAMC is adopted and amended by the Ministry of Finance in consultation with Banka Slovenije.

<sup>8</sup> See Article 10(2) of the draft law.

<sup>9</sup> See Annex I of Guideline ECB/2011/14 of 20 September 2011 on monetary policy instruments and procedures of the Eurosystem (OJ L 331, 14.12.2011, p. 1).

<sup>10</sup> See Articles 8(3), 10(1) and 12(1) of the draft law.

<sup>11</sup> See Article 2(2) of the draft law.

<sup>12</sup> See Article 9(8) of the draft law.

<sup>13</sup> See Article 20 of the draft law.

<sup>14</sup> See Article 19(5) of the draft law.

**7. Governance and competences of the BAMC**

- 7.1 In accordance with Article 7 of the draft law, the BAMC's Management Board is composed of seven directors appointed by the Government. It is recommended to appoint a number of independent directors to the Management Board to allow the BAMC to better resist the potential pressure from borrowers and prospective purchasers of assets seeking preferential treatment. While still possible under the abovementioned provision of the draft law, the appointment of independent directors is not expressly stipulated.
- 7.2 Article 18(1) of the draft law provides that the interministerial commission decides on the use of the measures under the draft law. The draft law could be more explicit as to which types of decisions would be taken by the interministerial commission and which decisions will be delegated to the BAMC Management Board in its day-to-day operations.

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

Done at Frankfurt am Main, 19 September 2012.

[signed]

*The President of the ECB*

Mario DRAGHI