EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 18 September 2013

on the establishment of a Financial Stability Board
and the macro-prudential mandate of national authorities

(CON/2013/70)

Introduction and legal basis

On 27 August 2013, the European Central Bank (ECB) received a request from the Slovenian Ministry of Finance for an opinion on a draft law on the macro-prudential supervision of the financial system (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[1], 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 implements Recommendation ESRB/2011/3 of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities[2] (hereinafter the 'ESRB Recommendation'). To this end, it provides for the establishment of a Financial Stability Board (FSB), which will be responsible for macro-prudential policy aimed at preventing and mitigating systemic risks to financial stability. Macro-prudential policy will be implemented by the FSB together with the three independent national authorities responsible for supervising relevant institutions in their respective segments of the financial system: Banka Slovenije, the Securities Market Agency and the Insurance Supervision Agency (hereinafter the 'supervisory authorities')[3].

1.2 The FSB will be composed of eight members: two representatives of each of the three supervisory authorities, and two representatives of the Ministry of Finance. The supervisory authorities' representatives will have one vote each, but the Ministry of Finance's representatives will not have voting rights. The Governor of Banka Slovenije will be the FSB's President and will chair the FSB

1 OJ L 189, 3.7.1998, p. 42.
2 OJ C 41, 14.2.2012, p.1.
3 See Articles 1 to 4 of the draft law.

meetings. The FSB will take decisions at its meetings, which will be normally convened by the FSB's President four times a year, but may also be convened on the initiative of any other FSB member. The quorum for decision-making will be met if five members with voting rights are present at the meeting. The FSB's secretariat will be provided by Banka Slovenije and will ensure analytical, administrative and logistical support to the FSB. The supervisory authorities will cooperate with the secretariat in preparing and providing the material to be discussed at FSB meetings and in performing its other tasks[4].

1.3 The FSB will be empowered to issue guidance to the supervisory authorities in the form of non-binding recommendations, warnings and instructions, in the following situations: (a) if it sees a need to prevent or mitigate systemic risk to financial stability; or (b) in order to implement the European Systemic Risk Board's (ESRB) warnings and recommendations. More specifically, the FSB will issue: (a) recommendations, where a disruption could occur in the financial system which may potentially lead to serious negative consequences for the functioning of the financial system and the real economy, if voted for by a majority of FSB members present at the meeting; (b) warnings, where such a disruption in the financial system has already occurred and could have such consequences, if voted for by at least four FSB members; and (c) instructions, where a disruption has already occurred and has such consequences, if voted for by at least five FSB members. The FSB's guidance will, in particular, define the systemic risk identified and the competent supervisory authority to which implementation of the guidance will be proposed. If appropriate, the FSB will also propose a particular macro-prudential supervisory measure. The FSB will decide on a case-by-case basis whether the guidance is to be published. The supervisory authority to which the guidance will be addressed shall, within seven working days of receipt of the guidance, either implement it or provide an explanation to the FSB of its reasons for non-implementation[5].

1.4 When implementing macro-prudential policy, the supervisory authorities will be responsible for the macro-prudential supervision of institutions which they supervise pursuant to the Law on Banka Slovenije, the Law on banking, the Law on the financial instruments market, the Law on insurance, the Law on investment funds and management companies, and other laws pursuant to which the supervisory authorities carry out their tasks (hereinafter the 'sectoral laws'[6]). They will implement FSB guidance issued to them in accordance with their competences by applying the available supervisory measures. The supervisory authorities will conduct macro-prudential supervision of relevant institutions by monitoring, collecting and verifying their reports and notifications; by inspecting their operations; and by taking supervisory measures pursuant to the sectoral laws and the draft law. The supervisory authorities will also, *inter alia*, assess systemic risks in their field of competence, and propose to the FSB a means of identifying systemically important institutions and the appropriate action to be taken. Together with the FSB the supervisory authorities will

4 See Articles 5 to7 and Article 10 of the draft law.

5 See Articles 9 to 11 and 17(2) of the draft law.

6 See Article 2 of the draft law.

participate in ESRB activities and follow its recommendations, in default of which they shall provide an explanation to the FSB of their reasons for any non-compliance with such acts[7].

1.5 The draft law lays down the rules for the collection and exchange of information and the protection of confidentiality in order to achieve the effective application of macro-prudential policy[8]. It also lays down rules for cross-border cooperation between relevant authorities[9].

2. General observations

2.1 The ECB supports the effective design of macro-prudential policy frameworks within the Member States, in line with the guiding principles expressed in the ESRB Recommendation. Moreover, the ECB and national central banks should play a leading role in macro-prudential oversight, given their expertise and existing responsibilities in the area of financial stability[10].

2.2 The draft law suggests that it is the intention of the consulting authority to confer such a leading role to Banka Slovenije by (a) designating the Governor of Banka Slovenije as President of the FSB, entrusted with convening and chairing its regular meetings, and (b) assigning to Banka Slovenije a competence to provide the FSB Secretariat. In addition, Banka Slovenije will be responsible for the macro-prudential supervision of financial institutions pursuant to sectoral laws, as well as leasing firms[11].

2.3 In line with observations made in previous ECB opinions[12], Banka Slovenije's mandate to perform macro-prudential tasks should not affect: (a) its institutional, functional and financial independence; or (b) the performance by the European System of Central Banks of its tasks under the Treaty and the Statute of the European System of Central Banks and of the European Central Bank. The ECB welcomes Article 12(2) of the draft law, which explicitly states that neither the performance of the tasks under the draft law nor the content of FSB guidance shall interfere with the supervisory authorities' fundamental objectives and independence.

2.4 The ECB understands that the FSB guidance provided to supervisory authorities under Article 9(1) will be limited to ensuring correct and timely implementation of the ESRB recommendations, where the ESRB has adopted recommendations on the same matter, and will be without prejudice to obligations on the addressees of ESRB recommendations, pursuant to Regulation (EU) No 1092/2010[13].

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7 See Articles 17 to 19 of the draft law.

8 See Articles 4(4), 14 to 16 and 21 of the draft law.

9 See Article 4, Article 13(3) and Article 15 of the draft law.

10 See, for example, paragraph 2.1 of Opinion CON/2013/66, paragraph 2.1 of Opinion CON/2013/54, paragraph 2.1 of Opinion CON/2013/45 and paragraph 2.1 of Opinion CON/2013/30. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

11 See Article 17(1) of the draft law.

12 See, for example, paragraph 2.2 of Opinion CON/2013/45 and paragraph 2.3 of Opinion CON/2013/30.

13 Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European System Risk Board, OJ L 331, 15.12.2010, p. 1.

2.5 In order to facilitate the FSB's ability to efficiently coordinate cooperation between supervisory authorities and to harmonise the use of macro-prudential supervisory measures applied without formal guidance from the FSB, the draft law may provide that supervisory authorities should, in a timely and appropriate manner, inform the FSB and other supervisory authorities of the measures taken.

2.6 In line with observations made in previous ECB opinions[14], the consulting authority is invited to revise Article 4(5) and Article 15(5) of the draft law to ensure that the FSB shall also cooperate and exchange data and information with the ECB and the ESRB, in accordance with the ESRB Recommendation.

2.7 This opinion is without prejudice to the conclusions of the follow-up assessment of the above mentioned ESRB Recommendation, which the ESRB will prepare in accordance with Article 17 of Regulation (EU) No 1092/2010.

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

Done at Frankfurt am Main, 18 September 2013.

[signed]

The President of the ECB

Mario DRAGHI

14 See paragraph 2.4 of Opinion CON/2013/54.