



**OPINION OF THE EUROPEAN CENTRAL BANK**  
**of 28 May 2015**  
**on amendments to the legal framework governing the**  
**Slovenian Bank Asset Management Company**  
**(CON/2015/16)**

**Introduction and legal basis**

On 24 April 2015 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 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<sup>1</sup>, as the draft law relates to Banka Slovenije and 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 Law on Slovenia's measures to strengthen bank stability<sup>2</sup> (hereinafter the 'Law on bank stability') entered into force in December 2012. With the objective to strengthen the stability of the Slovenian financial system, it provided for the establishment of the State-owned Bank Asset Management Company (BAMC) and a number of stabilisation measures including: (i) the transfer of banks' impaired assets to the BAMC; (ii) the issuance of State guarantees for the liabilities of the BAMC; and (iii) the recapitalisation of banks by the State. Detailed rules implementing the Law on bank stability were laid down in secondary legislation, specifically the Regulation on the implementation of measures to strengthen bank stability<sup>3</sup> (hereinafter the 'Regulation'). Both legislative acts were the subject of consultations with the ECB<sup>4</sup>.
- 1.2 The stabilisation measures provided for in the Law on bank stability have been implemented in certain distressed Slovenian banks. According to the explanatory memorandum to the draft law, although the impaired assets have been removed from the balance sheets of these banks, and

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<sup>1</sup> Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

<sup>2</sup> *Zakon o ukrepih Republike Slovenije za krepitev stabilnosti bank (ZUKSB) (Uradni list RS, Nos 105/2012, 63/13 – ZS-K and 23/14 – ZDIJZ-C).*

<sup>3</sup> *Uredba o izvajanju ukrepov za krepitev stabilnosti bank (Uradni list RS, No 103/13).*

<sup>4</sup> See ECB Opinions CON/2012/71, CON/2013/21, CON/2013/67 and CON/2013/86. All ECB Opinions are published on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

they have been recapitalised, this is not enough to ensure that they operate successfully as, to provide credit, banks also need restructured companies with sound business plans. It is therefore important to actively and comprehensively pursue the restructuring of companies and the BAMC plays an important role in this process.

- 1.3 In order to further improve the efficient functioning of the BAMC in that role, the draft law introduces a number of adjustments and amendments to the Law on bank stability, in particular to better clarify the legal framework of the BAMC and of its activities. The draft law specifies more clearly the objectives of the Law on bank stability, in particular the role of the BAMC in corporate restructuring. The draft law sets out the criteria under which the BAMC may engage in the restructuring of companies of which it is a shareholder or creditor, and allows the BAMC to carry out any legal transaction necessary for the successful restructuring of such companies, including providing loans to its debtors or guaranteeing its debtors' liabilities. The draft law sets out the conditions under which the BAMC may establish, and purchase new shares in, companies, including special purpose vehicles, also with a view to achieving a more economical or specialised management and disposal of the BAMC's assets. In addition, the draft law provides that the BAMC may require a bank, which was previously subject to stabilisation measures under the Law on bank stability, to transfer to the BAMC claims against or shares in a company in which the BAMC already holds shares or against which the BAMC already has claims, in exchange for cash compensation equal to the market value of the assets being acquired. The draft law also extends the BAMC's mandate from 2017 until 2022, with the aim of maximising returns on public funds.
- 1.4 Some of the proposed amendments under the draft law incorporate legislative provisions which were originally contained in the Regulation, which is secondary legislation, into the Law on bank stability, the national primary legislation. These proposed amendments refer, in particular, to the BAMC's borrowing, its debt management, limitations on the payment of its dividends and the provision of information on the BAMC's activities to the ECB.
- 1.5 The draft law also includes an explicit requirement that the BAMC operates in a transparent, economical, efficient and effective manner, and contains further provisions to this end. In addition, it aims to ensure the independence of the BAMC in managing its assets, inter alia, by clarifying that the supervisory competences of the Ministry of Finance encompass the lawfulness of the BAMC's operations. For this purpose the Ministry of Finance may issue guidelines to the BAMC to be followed, which must, however, be general and may not constitute instructions for action in individual cases. The draft law also explicitly clarifies that the responsibility for the management of the BAMC rests with its executive directors.
- 1.6 Additionally, the draft law removes the liability of the State for all liabilities of the BAMC. This amendment is not in any way related to, and does not affect, the guarantees that the State issues for the BAMC's bonds in the context of a stabilisation measure provided for by the Law on bank stability.
- 1.7 The draft law also contains amendments to other provisions of the Law on bank stability. Among others, it removes the requirement for the BAMC to set up a 'fund' without legal personality, which proved to be an obsolete requirement and leaves creating such a fund optionally. The draft law also provides for certain exemptions for the BAMC in the application of various national laws.

Finally, the draft law clarifies the consultative role of Banka Slovenije in the adoption of the rules implementing the Law on bank stability. Accordingly, when Banka Slovenije is to be consulted in the preparation of acts implementing the Law on bank stability, the Ministry of Finance shall explain any deviation from Banka Slovenije's opinion.

## 2. General observations

The ECB recognises the effort to enhance the role of the BAMC in facilitating the restructuring of companies. This should ultimately help improve access to credit for the corporate sector, facilitate lending to it by the banking sector, as well as support the recovery and functioning of the real economy. The ECB also notes and supports the effort to ensure that the BAMC operates in a transparent, economical, efficient and effective manner, with a view to maximising the recovery value of assets acquired and, thus, minimising the costs borne by the public. As noted in previous Opinions<sup>5</sup>, conforming with a comprehensive and transparent asset management and divestiture strategy, observing internationally recognised best practice as regards corporate governance, including maintaining independent management of the BAMC, is important for achieving the targets the BAMC has been set.

## 3. Specific observations

### 3.1. *Provision of information to the ECB and Banka Slovenije, BAMC's cash protocol and the eligibility of bonds in Eurosystem operations*

3.1.1 In its previous Opinions the ECB recommended, in the context of a financial plan, that the necessary legal arrangements are provided to ensure, in a transparent manner, the timely redemption of State-guaranteed BAMC bonds and other financial instruments or credit claims of transferring banks (hereinafter the 'cash protocol')<sup>6</sup>. This recommendation has been followed by the Slovenian authorities in the Regulation and the ECB notes that several of its observations<sup>7</sup> are reflected in the final text thereof. The ECB further notes that such final text also included a new provision according to which the BAMC may share with the ECB the information on its operations.

3.1.2 The draft law incorporates certain provisions from the Regulation that constitute the framework for the BAMC's cash protocol and permit the BAMC to provide information on its operations, within their respective areas of competence, to the ECB and Banka Slovenije<sup>8</sup>. The ECB understands that these proposed amendments are aimed at increasing legal certainty and that the provisions regarding the detailed elements of the cash protocol in the Regulation remain unchanged in substance.

3.1.3 The draft law infers that the cash protocol arrangements for the BAMC and the provision of information on its operations to the ECB and Banka Slovenije are aimed at ensuring that the

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<sup>5</sup> See second subparagraph 7 of the Opinion CON/2013/21.

<sup>6</sup> See paragraph 6 of the ECB Opinion CON/2013/21 and paragraph 7 of the ECB Opinion CON/2013/67.

<sup>7</sup> See paragraphs 4.1, 4.3 and 4.4 of the ECB Opinion CON/2013/86.

<sup>8</sup> See Article 4(7), Article 10a(9) to (15) and Article 12(3) of the Law on bank stability, as amended by the draft law.

BAMC's State-guaranteed bonds qualify as eligible collateral for ECB monetary policy operations<sup>9</sup>. The ECB reiterates that it remains the prerogative of the Eurosystem to decide, on the basis of any information it may consider relevant within the legal framework laid down in and according to Article 18.1 of the Statute of the European System of Central Banks and of the European Central Bank, whether the relevant financial instruments and credit claims fulfil the criteria of its collateral framework<sup>10</sup>.

### 3.2 *Transfer of assets from banks at market value, granting loans and providing guarantees by the BAMC*

3.2.1 The ECB understands that the purpose of the option under the draft law for the BAMC to require the transfer of certain assets from banks<sup>11</sup> is to enhance its ability to concentrate claims and equity participations in particular companies<sup>12</sup> within the BAMC in order to strengthen the BAMC's position relative to other creditors and/or shareholders in those companies, and with a view solely to facilitating the restructuring processes of those companies. In this regard the ECB notes that the BAMC should not require such transfers where it could lead to non-compliance by the original asset holder with prudential requirements as laid down in Regulation (EU) 575/2013 of the European Parliament and of the Council<sup>13</sup> and Directive 2013/36/EU of the European Parliament and the Council<sup>14</sup>. In this regard the ECB recommends implementing a provision requiring the consultation of the competent supervisory authority prior to a request for the transfer of assets. The ECB further notes that any transfer of assets to the BAMC must comply with EU State aid rules and the applicable valuation standards in determining the market value of the asset. In this context, the determination of the market value in accordance with the International Valuation Standards by an independent appraiser is important.

3.2.2 According to the draft law, the BAMC may grant loans and provide guarantees to debtors in whose restructuring it has participated<sup>15</sup>. In this context, the ECB notes that the BAMC is not subject to prudential regulation or supervision, nor does it aim to perform any activities which would require a licence for the provision of banking services within Slovenia or abroad<sup>16</sup>. However, as the BAMC may, by requesting assets, granting loans and providing guarantees, be exposed to significant credit risks, the ECB recommends that the draft law provides safeguards preventing the BAMC from incurring losses due to an inappropriate management of that credit risk. In this regard, the ECB expects the BAMC to grant loans and provide guarantees to its debtors only on the basis of

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<sup>9</sup> See the explanatory memorandum and Article 10a(15) of the Law on bank stability as amended by the draft law.

<sup>10</sup> See paragraph 5.5 of ECB Opinion CON/2012/71 and paragraph 5 of ECB Opinion CON/2013/21.

<sup>11</sup> See Article 11(2) of the Law on bank stability as amended by the draft law.

<sup>12</sup> I.e. in those companies, in which the BAMC already holds shares or against which the BAMC already has claims as a result of having received those claims and shares when their transfer to the BAMC was implemented as a stabilisation measure under the Law on bank stability,

<sup>13</sup> Regulation (EU) 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

<sup>14</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

<sup>15</sup> See Article 10a(5) of the Law on bank stability as amended by the draft law and the explanatory memorandum thereto.

<sup>16</sup> See Article 11(9) of the Law on bank stability as renumbered by the draft law.

sound economic criteria and a rigorous assessment of the borrowers' creditworthiness, avoiding any distortion to markets.

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

Done at Frankfurt am Main, 28 May 2015.

[signed]

*The President of the ECB*

Mario DRAGHI