



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 13 April 2016

on the prevention of money laundering and terrorist financing

(CON/2016/23)

Introduction and legal basis

On 9 March 2016 the European Central Bank (ECB) received a request from the Slovenian Ministry of Finance for an opinion on a draft law on the prevention of money laundering and terrorist financing (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 Article 2(1) of Council Decision 98/415/EC¹, as the draft law relates to Banka Slovenije and the ECB's specific tasks concerning the prudential supervision of credit institutions. 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

The main purpose of the draft law, which replaces the current Law on the prevention of money laundering and terrorist financing² (hereinafter the 'Law'), is to implement Directive (EU) 2015/849 of the European Parliament and of the Council³ into Slovenian law. In addition, the draft law introduces certain amendments aimed at improving the effectiveness of the system for the prevention of money laundering and terrorist financing (hereinafter 'AML/CTF') in Slovenia, by removing identified shortcomings in the current Law and addressing certain recommendations made to Slovenia by the Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism – MONEYVAL⁴. As part of these amendments, the draft law strengthens the powers of the Office for Money Laundering Prevention (hereinafter the 'Office'), which is the Slovenian financial

¹ 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).

² Zakon o preprečevanju pranja denarja in financiranja terorizma (ZPPDFT) (Ur. l. RS No 60/07, 19/10, 77/11, 108/12 – ZIS-E and 19/14).

³ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

⁴ See the Report on Fourth Assessment Visit for Slovenia, dated 17 March 2010, and the 2nd regular follow-up progress report, dated April 2013, available on the Council of Europe's website at 'www.coe.int'.

intelligence unit, established as part of the Ministry of Finance⁵. The Office may issue administrative decisions and sanctions to the entities obliged to comply with AML/CTF laws and regulations (hereinafter the 'obliged entities'). The new powers of the Office under the draft law will include investigative powers allowing it to conduct on-site inspections of the obliged entities. These powers will extend both in relation to obliged entities without a primary supervisor (e.g. firms performing tax consultancy services) and to obliged entities having a primary supervisor. According to the explanatory memorandum, the aim of this amendment is to improve the supervisory system over the obliged entities and to provide for more effective sanctioning. The primary supervisors for ensuring compliance with AML/CTF laws and regulations by obliged entities in the financial market are otherwise the relevant sectoral prudential supervisors: Banka Slovenije, the Securities Market Agency and the Insurance Supervision Agency.

2. General observations

This opinion does not address whether the draft law effectively transposes Directive (EU) 2015/849 into Slovenian law, but rather the assessment is limited to certain provisions of the draft law that relate to the role and tasks of Banka Slovenije, and to ECB competences and responsibilities in the field of the prudential supervision of credit institutions. As noted in Recitals 28 and 29 of Regulation (EU) No 1024/2013⁶, the supervisory tasks not conferred on the ECB, which remain with the national authorities, include the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. The ECB should cooperate, as appropriate, fully with the national authorities, which are competent to ensure the fight against money laundering⁷. With respect to the competences entrusted to the Office by the draft law, it is noted that they result in certain inspection powers that parallel those of Banka Slovenije in relation to the same obliged entities. In this regard, the ECB understands that national authorities shall closely cooperate in exercising their powers without adversely affecting their respective supervisory responsibilities. As regards the measures and sanctions to be imposed on credit institutions as obliged entities following infringements of AML/CTF provisions, which may, in case of the most severe breaches, include the withdrawal of the authorisation to carry out activities⁸, it is noted that the ECB has exclusive competence, for prudential supervisory purposes, to withdraw a banking licence⁹. With regard to the possibility under the draft law to impose a prohibition on the performance of managerial tasks¹⁰, for significant credit institutions, it is noted that the ECB is directly competent to ensure compliance with acts imposing requirements on credit institutions to have in place robust governance

⁵ The Slovenian Office can be categorised as an administrative type of financial intelligence unit (see the publication of the International Monetary Fund and the World Bank *Financial Intelligence Units: An Overview*, dated 2004, available here: <http://www.imf.org/external/pubs/ft/FIU/fiu.pdf>).

⁶ Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

⁷ See also Article 6(2) of the Regulation (EU) No 1024/2013 pursuant to which the ECB and national competent authorities shall be subject to a duty of cooperation in good faith, and an obligation to exchange information.

⁸ See Article 165(8) in conjunction with Article 165(6) of the draft law.

⁹ See Article 4(1)(a) of Regulation (EU) No 1024/2013.

¹⁰ See Article 165(9) in conjunction with Article 165(6) and (7) of the draft law.

arrangements, including the fit and proper requirements for persons responsible for the management of credit institutions¹¹.

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

Done at Frankfurt am Main, 13 April 2016.

[signed]

The President of the ECB

Mario DRAGHI

¹¹ See Article 4(1)(e) of Regulation (EU) No 1024/2013.