



OPINION OF THE EUROPEAN CENTRAL BANK
of 26 September 2016
on amendments to the Book Entry Securities Act
(CON/2016/46)

Introduction and legal basis

On 26 August 2016 the European Central Bank (ECB) received a request from the Slovenian Ministry of Finance for an opinion on amendments to the Book Entry Securities Act¹ (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 fifth indent of Article 2(1) of Council Decision 98/415/EC², as the draft law relates to payment and settlement systems. 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

- 1.1 The main objective of the draft law is to establish rules facilitating auto-collateralisation within the Target2 Securities (T2S) platform by transferring book-entry securities to an account pledged in favour of Banka Slovenije. The draft law's explanatory memorandum indicates that under the current Book Entry Securities Act³, a pledge over book-entry securities can only be established on the basis of a unilateral order entered in the system by a member of a central securities depository (CSD). For successful auto-collateralisation, the pledgee must also be able to create a pledge. The draft law takes into account the fact that T2S cannot accommodate multiple liens over book-entry securities.
- 1.2 The draft law amends the current Book Entry Securities Act to provide for the creation and deletion of pledges over book-entry securities with and without the transfer of dematerialised securities between accounts. The creation and deletion of such pledges involving a transfer between the accounts of different holders can only be accomplished by a bilateral order.
- 1.3 When entering a transferring part of an order for the transfer of book-entry securities, their holder may give prior authorisation to the member of the CSD authorised to enter the receiving part of the order on behalf of the acquirer. Such prior authorisation may only be given for book-entry securities

¹ *Zakon o spremembah in dopolnitvah zakona o nematerializiranih vrednostnih papirjih.*

² 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).

³ *Zakon o nematerializiranih vrednostnih papirjih (ZNVP-1) (Ur. l. RS No 75/15).*

on a specially marked account of the holder and is only valid for book-entry securities on this account.

- 1.4 The draft law further provides that if, in accordance with the holder's request when entering their pledge over the book-entry securities, the member of the CSD authorised by the pledgor is replaced by a member authorised by the pledgee, the pledge is then created on the basis of a bilateral order. The holder may give prior authorisation for a member of the CSD to create the pledge. Such prior authorisation may only be given for book-entry securities on a specially marked account of the holder and is only valid for book-entry securities on this account. The draft law provides that a book-entry security may not be encumbered on multiple occasions, nor may a pledge be established over an already encumbered book-entry security.

2. General observations

- 2.1 The ECB welcomes the amendments proposed by the draft law, which will further align the Slovenian legal framework with T2S requirements for successful auto-collateralisation and facilitate the smooth integration of the Slovenian CSD into T2S.
- 2.2 The ECB understands that in the context of T2S auto-collateralisation, Banka Slovenije is in a position to be simultaneously both a member of the CSD, authorised in advance to enter the transferring part of the order, and the acquirer (i.e., the entity which obtains a pledge over the security), authorised to enter the receiving part of the order. Consequently, T2S auto-collateralisation transactions are executed in favour of Banka Slovenije automatically in line with T2S's functionalities without any additional intervention by Banka Slovenije or other CSD members. The ECB further understands that by referring to the specially marked account of the holder, the draft law refers to the account pledged in favour of Banka Slovenije.

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

Done at Frankfurt am Main, 26 September 2016.

[signed]

The President of the ECB

Mario DRAGHI