



EUROPEAN CENTRAL BANK

EUROSYSTEM

EN

ECB-PUBLIC

## OPINION OF THE EUROPEAN CENTRAL BANK

of 14 February 2018

on the return of monetary funds to the Republic of Slovenia from designated tax havens

(CON/2018/8)

### Introduction and legal basis

On 11 December 2017 the European Central Bank (ECB) received a request from the National Assembly of the Republic of Slovenia (the “National Assembly”) for an opinion on a draft law on the return of monetary funds to the Republic of Slovenia from designated tax havens (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 (hereinafter ‘TFEU’) and the third indent of Article 2(1) of Council Decision 98/415/EC<sup>1</sup> as the draft law relates to Banka Slovenije. 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 main objective of the draft law, which was prepared by the National Council of the Republic of Slovenia (*Državni svet*), is to introduce a regime resembling a penalty tax regime in order to combat the leaking of monetary funds into designated low or no-tax countries (so-called ‘tax havens’) which, according to the draft law’s explanatory memorandum, are causing harmful tax competition to traditional tax countries such as Slovenia. The draft law stipulates the conditions, procedure and relevant authorities for enabling the return of funds from the designated tax havens into the national budget. The list of countries considered as tax havens under the draft law includes inter alia several EU Member States.
- 1.2 The draft law provides that funds which have been directly or indirectly transferred from Slovenian bank accounts into accounts in the designated tax havens will be subject to a penalty tax rate. For transfers made from 25 June 1991 until the entry into force of the draft law, a rate of 20 per cent will apply and the liable persons will have to make payments within a six-month period following the entry into force of the draft law. For transfers of funds made after the entry into force of the draft law, a rate of 22 per cent will apply and payments will be due within three months of making the relevant transfer. In case of breach of the obligation of payment of the relevant sum, the liable person will be charged by the tax authority at a rate of 80 per cent of the transferred funds.
- 1.3 Liable persons include natural persons with Slovenian citizenship; foreign natural persons holding accounts in banks and other payment institutions in Slovenia; legal entities registered in Slovenia

---

<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).

operating in the relevant period covered by the draft law; and foreign legal entities holding accounts in banks and other payment institutions in Slovenia during the relevant period. The draft law excludes from its scope certain entities, including State authorities, international organisations, religious organisations, as well as remittances made by banks on their own behalf and payments made by Banka Slovenije.

- 1.4 Public authorities and financial institutions, including banks and Banka Slovenije, are obliged to provide information to the authorities responsible for the implementation of the draft law on any payments made by liable persons to the designated tax havens and to provide any other assistance, free of charge. The draft law indicates that all data related to liable persons under the draft law and all data related to the payments made to the designated tax havens is public information that can be acquired and published by anyone.

## 2. Observations

- 2.1 The ECB notes that on 5 December 2017 the Council adopted the Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes<sup>2</sup>. According to the Commission, when assessed against the EU list criteria, all Member States are fully compliant.<sup>3</sup> Since the taxation of funds transferred to Member States designated as tax havens as foreseen by the draft law would also appear to affect the free movement of capital, the National Assembly should consult the Commission, as the guardian of the Treaties, on the draft law, if it has not already done so<sup>4</sup>.
- 2.2 The ECB understands that the data to be provided to the relevant authorities responsible for the implementation of the draft law is limited to information on remittances of monetary funds of liable persons, as stipulated in article 9(1) of the draft law. However, where Banka Slovenije, which is also the national competent authority empowered by national law to supervise credit institutions, shares such information with, or provides assistance to, the relevant authorities, it must comply with the confidentiality regime set out in Directive 2013/36/EU<sup>5</sup> of the European Parliament and of the Council.
- 2.3 While it appears that the data requests to Banka Slovenije would, primarily, not concern statistical information, in view of the broad scope of the potential assistance to be provided by Banka Slovenije to the relevant authorities, the framework applicable to confidential statistical data should be considered. Article 8(3) of Council Regulation (EC) No 2533/98<sup>6</sup> provides that the European System of Central Bank (ESCB) members shall take all the necessary regulatory, administrative, technical and organisational measures to ensure the physical and logical protection of confidential

---

<sup>2</sup> See Council conclusions adopted in Brussels on 5 December 2017, document number 15429/17, FISC 345, ECOFIN 1088, and the Commission's accompanying press release, available at: [http://europa.eu/rapid/press-release\\_IP-17-5121\\_en.htm](http://europa.eu/rapid/press-release_IP-17-5121_en.htm).

<sup>3</sup> See the Questions and Answers on the EU list of non-cooperative tax jurisdictions, available at: [http://europa.eu/rapid/press-release\\_MEMO-17-5122\\_en.htm](http://europa.eu/rapid/press-release_MEMO-17-5122_en.htm).

<sup>4</sup> See for example ECB Opinion CON/2006/6. All ECB opinions are published on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>5</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>6</sup> Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8).

statistical information. Confidential statistical information collected pursuant to Council Regulation (EC) No 2533/98 may be used exclusively for the exercise of the tasks of the ESCB as well as in the field of prudential supervision with regard to NCBs or for other statutory NCB tasks.<sup>7</sup>

- 2.4 NCB staff members are also subject to the obligation of professional secrecy under Article 37 of the Statute of the European System of Central Banks and of the European Central Bank. The primacy of Union law means that national laws on third party access to documents may not result in infringements of the ESCB's confidentiality regime. Where access to an NCB's information and documents is allowed under Union law, the NCBs should ensure that the receiving bodies protect the confidentiality of information and documents disclosed at a level corresponding to that applied by the NCBs themselves. Any provision of information under the draft law by Banka Slovenije should comply with applicable Union laws, including those governing the exchange of supervisory and statistical information, as well as the obligation of professional secrecy.<sup>8</sup>
- 2.5 The ECB understands Article 9 of the draft law to constitute a cooperation arrangement between, inter alia, Banka Slovenije and the relevant authorities responsible for the implementation of the draft law. Banka Slovenije is to provide to the authorities, free of charge, data relating to transfers of funds of liable persons and assistance as necessary. In this respect the ECB notes the principle of financial independence of NCBs which requires that Member States do not put their NCB in a position where they have insufficient financial resources to carry out their Eurosystem-related tasks, both from an operational and a financial perspective<sup>9</sup>. Therefore, the cooperation arrangement should not create any financial risks for Banka Slovenije. Should the scope of the draft law in respect of any assistance provided by Banka Slovenije prove in practice to require a regular, lasting and substantial engagement of Banka Slovenije's resources with the result that its assistance qualifies as a new task for Banka Slovenije, then the ECB would need to be informed accordingly in order to reassess the draft law and the related tasks of Banka Slovenije against the prohibition on monetary financing under Article 123 of the Treaty.<sup>10</sup>

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

Done at Frankfurt am Main, 14 February 2018.

[signed]

*The President of the ECB*

Mario DRAGHI

---

<sup>7</sup> See paragraph 6.4 of ECB opinion CON/2015/57.

<sup>8</sup> See paragraph 6.3 of ECB opinion CON/2015/57.

<sup>9</sup> See ECB Convergence Report 2016, p.25.

<sup>10</sup> See for example ECB opinions CON/2017/32, CON/2016/35, CON/2017/3, CON/2015/22, CON/2016/34.