



## OPINION OF THE EUROPEAN CENTRAL BANK

of 27 May 2014

on public access to specific information concerning the bad loans of certain banks

(CON/2014/39)

### Introduction and legal basis

On 11 April 2014, the European Central Bank (ECB) received a request from the President of the Slovenian Parliament for an opinion on a draft law amending the Law on access to public sector information<sup>1</sup> (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 sixth indent of Article 2(1) of Council Decision 98/415/EC<sup>2</sup>, as the draft law relates 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 access to public sector information<sup>3</sup> (hereinafter the 'Law') provides a procedure for free access to and reuse of information held by entities governed by public law. According to the most recent amendments to the Law<sup>4</sup>, this includes information held by commercial entities under the dominant influence of entities governed by public law.
- 1.2 As a result of the State aid recently granted to certain Slovenian banks<sup>5</sup> in the form of, inter alia, recapitalisation and the transfer of impaired bank assets to the state-owned Bank Asset Management Company (BAMC), the most recent amendments to the Law require public disclosure of specific information on 'bad loans'<sup>6</sup> transferred by the banks that have received State aid to the

---

<sup>1</sup> Predlog zakona o spremembah in dopolnitvah Zakona o dostopu do informacij javnega značaja, dated 8 April 2014.

<sup>2</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>3</sup> *Zakon o dostopu do informacij javnega značaja (ZDIJZ)* (Ur. l. RS No 51/06 – official consolidated text, 117/06 - ZDavP-2 and 23/14).

<sup>4</sup> Adopted on 24 March 2014 and entering into force on 17 April 2014 (*Zakon o spremembah in dopolnitvah Zakona o dostopu do informacij javnega značaja (ZDIJZ-C)*) (Ur. l. RS No 23/14).

<sup>5</sup> Pursuant to the Law on Slovenia's measures to strengthen bank stability (*Zakon o ukrepih Republike Slovenije za krepitev stabilnosti bank (ZUKSB)*) (Ur. l. RS No 105/12, 63/13 - ZS-K and 23/14 - ZDIJZ-C).

<sup>6</sup> The term 'bad loans' is defined in Article 6.a(6) of the Law.

## ECB-PUBLIC

BAMC<sup>7</sup>. The Law now requires that for each bad loan transferred, the following information is to be disclosed by the BAMC:

- (a) information relating to concluded contracts including: (i) the type and value of the transaction; (ii) the name and registered seat of both the creditor and debtor and; (iii) the date of conclusion of the contract;
- (b) information concerning the resolutions adopted by the body within the relevant bank responsible for the approval of the transaction including: (i) the name of the body that approved the transaction together with the name and position of each member of the body; and (ii) the names of the bank's Management Board and Supervisory Board members at the time of approval of the loan;
- (c) information on documents concerning the security interest to include the type of the security interest and assets which are the subject of the security interest for the loan; and
- (d) information concerning the agreement concluded between the relevant bank and the BAMC including: (i) the name and registered seat of the bank; (ii) the debtors of the individual bad loans transferred to the BAMC; and (iii) the final gross exposure to individual debtors of such loans.

This disclosure is to be made on the BAMC's website<sup>8</sup>.

- 1.3 Building on these most recent amendments, the draft law broadens the scope of disclosure required in relation to bad loans. Not only is the information on bad loans transferred from the banks that have received State aid to the BAMC to be made public, but also information on bad loans remaining on their balance sheets at the date of entry into force of the draft law<sup>9</sup>. The draft law requires banks that have received State aid to publish on their websites the relevant information on bad loans referred to in paragraph 1.2 above<sup>10</sup>.
- 1.4 According to the explanatory memorandum to the draft law, following the recapitalisation of the banks with taxpayers' money, the public interest requires an increase in transparency as proposed by the draft amendments. The explanatory memorandum states that the extensive State support granted to the banks calls for transparent, efficient and responsible conduct by both the BAMC and the banks in future.

## 2. Duty to consult the ECB

The ECB notes that the most recent amendments to the Law, which introduced a requirement for public disclosure of information relating to bad loans transferred to the BAMC, also assigned a new task to Banka Slovenije. Pursuant to Article 10.a(10) of the Law, Banka Slovenije is to specify detailed rules for

---

<sup>7</sup> Article 6.a(5) in connection with Article 1.a(3) of the Law.

<sup>8</sup> See Article 6.a(5) to (7) and Article 10.a(10) of the Law.

<sup>9</sup> See the proposed amendments to Article 6.a(5) of the Law.

<sup>10</sup> See the proposed amendments to Article 6.a(7) of the Law, the proposed Article 10.a(13) and the transitional provisions of the draft law.

the publication of information on bad loans. Based on Articles 127(4) and 282(5) of the Treaty and the third indent of Article 2(1) of Council Decision 98/415/EC, the national authorities must consult the ECB on draft legislative provisions that fall within the ECB's fields of competence, including draft legislative provisions that relate to national central banks. The ECB must be consulted on national legislative provisions before they are adopted and at an appropriate stage in the legislative process which gives the ECB sufficient time to examine the draft legislative provisions, adopt its opinion and allow the relevant national authorities to take the ECB's opinion into consideration. The ECB requests that, in future, the Slovenian authorities meet their obligation to consult the ECB.

### 3. Disclosure of information

3.1 Pursuant to the Law and the draft law, a broad range of information on the individual bad loans of Slovenian banks that have received State aid pursuant to the Law on Slovenia's measures to strengthen bank stability is required to be published. Publication is required either by the BAMC, where the bad loans are transferred from the banks, or by the banks themselves if they have loans recorded as bad loans on their balance sheets at the date of entry into force of the draft law.

The explanatory memorandum to the draft law could be interpreted as providing that the scope of the disclosure obligation under the Law and the draft law covers those banks that have received or will receive State aid by the date of entry into force of the draft law. Therefore, the banks would have to disclose information concerning the loans on their balance sheet recorded as bad loans on the date of entry into force of the draft law. However, this is not clear due to the wording of the proposed amendment to Article 6.a(5) of the Law, in particular on a reading of the consolidated text of Article 6.a(5).

3.2 The ECB notes that specific disclosure obligations, exceptions and prohibitions are imposed by Union law, e.g. the Capital Requirements Regulation (CRR)<sup>11</sup>, the Capital Requirements Directive<sup>12</sup>, the Market Abuse Regulation<sup>13</sup>, the Prospectus Directive<sup>14</sup>, as well as by Slovenian national law, e.g. the Law on banking<sup>15</sup>. The ECB would welcome clarification in the draft law as to the interaction and priority between the specific information disclosure to be made pursuant to

---

<sup>11</sup> Regulation (EU) No 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>12</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>13</sup> Regulation (EU) No .../2014 of the European Parliament and of the Council on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (not yet published in the Official Journal).

<sup>14</sup> Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).

<sup>15</sup> *Zakon o bančništvu (ZBan-1)* (Ur. l. RS No 99/10 – official consolidated text, 52/11 - corr., 9/11 - ZPlaSS-B, 35/11, 59/11, 85/11, 48/12, 105/12, 56/13, 63/13 - ZS-K and 96/13).

the draft law and the disclosure obligations or prohibitions under Union law and existing national legislation (including national legislation transposing Union law)<sup>16</sup>.

The ECB further notes that the CRR provides for a comprehensive disclosure regime which also contains rules on the disclosure of impaired exposures and confidential information. The CRR allows institutions to omit the disclosure of items of information where the information is confidential, i.e. if institutions have binding obligations of confidentiality to customers or in counterparty relationships<sup>17</sup>. Confidentiality clauses are usually to be found in loan agreements and therefore constitute one such binding customer or counterparty relationship. Moreover, the CRR contains a rule on the disclosure of impaired and past due exposures which regulates the information to be disclosed on bad loans in amounts allocated by, for example, geographical area (rather than by bank customer or counterparty)<sup>18</sup>. The rationale behind the relevant Articles of the CRR<sup>19</sup> is that legal provisions on the disclosure of financial information must not require credit institutions to disclose details relating to customers or other counterparties to a loan agreement. Also, the competent authorities should pay appropriate attention to cases where they suspect that information is regarded as, *inter alia*, confidential by an institution in order to avoid disclosure of such information<sup>20</sup>. Finally, the objective of the CRR to ensure progressive convergence towards uniform rules on disclosure by institutions should not be undermined<sup>21</sup>.

- 3.3 The explanatory memorandum to the draft law states that the disclosure of information on bad loans is in the public interest due to the State aid involved in the rehabilitation of the Slovenian banking system and that the draft law aims to foster responsible conduct in the future. In addition to the ECB's observations on the interaction of the draft law with Union financial services legislation raised in paragraph 3.2 above, the ECB notes that there may be exceptional circumstances where the information will be of systemic importance and where legitimate interests will justify that disclosure be delayed or prevented. Such legitimate interests could include<sup>22</sup>: (a) preserving the stability of the financial system; (b) preventing liquidity crises from turning into solvency crises; (c) avoiding circumstances where public disclosure could undermine the conclusion of negotiations designed to ensure the long-term financial recovery of a credit institution; and (d) ensuring the orderly application of resolution tools under the Bank Recovery and Resolution Directive<sup>23</sup>. Therefore, the ECB queries whether, from a financial stability perspective, the draft law should also provide some safeguards regarding the publication of information relating to bad loans

---

16 See Opinion CON/2011/84, paragraph 7.2.

17 See Articles 432 and 442 of the CRR.

18 See Article 442(h) of the CRR.

19 See Articles 432 and 442 of the CRR.

20 See recital 68 of the CRR.

21 See recital 120 of the CRR.

22 See Opinions CON/2012/99, paragraph 9, CON/2011/84, paragraph 7.2 and CON/2012/21, paragraph 16.

23 Directive 2014/.../EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (not yet published in the Official Journal).

## ECB-PUBLIC

required by Article 6.a(5) of the Law. Ideally, the assessment of whether the information is of systemic importance and whether the delay or prevention of disclosure is in the public interest should be made by Banka Slovenije, as both the national central bank and the national supervisory authority, in close cooperation with the relevant macro-prudential authorities and the ECB<sup>24</sup>.

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

Done at Frankfurt am Main, 27 May 2014.

[Signed]

*The President of the ECB*

Mario DRAGHI

---

<sup>24</sup> See Opinion CON/2012/21, paragraph 16.3.