



**OPINION OF THE EUROPEAN CENTRAL BANK**  
**of 3 February 2016**  
**on the deposit guarantee scheme**  
**(CON/2016/6)**

**Introduction and legal basis**

On 12 January 2016, the European Central Bank (ECB) received a request from the Slovenian Ministry of Finance for an opinion on a draft law on the deposit guarantee scheme (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 main purpose of the draft law is to replace the deposit guarantee scheme (DGS) in Slovenia with a new DGS to bring national law in line with Directive 2014/49/EU of the European Parliament and of the Council<sup>2</sup>.
- 1.2 The DGS is currently regulated by the Slovenian Law on banking<sup>3</sup>. It is financed on an ex post basis and Banka Slovenije is responsible for operating certain aspects of the scheme. Under the current DGS, each participating bank is required to hold a certain amount of its assets, equivalent to the participating bank's share in the guarantee, in liquid investments. Banka Slovenije activates the DGS in the event of a bank's bankruptcy by calling on the participating banks to contribute their share of the guarantee and, where necessary, by requesting the State to cover any temporary financing needs of the DGS. Banka Slovenije then channels the collected funds to the bank it will have appointed to pay out on the guaranteed deposits. When the claims arising from the guaranteed deposits are repaid from the banks' bankruptcy estate, Banka Slovenije re-allocates the funds it receives, back to the guaranteeing banks. Banka Slovenije, among other things, also regularly verifies the DGS mechanisms.

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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> Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149).

<sup>3</sup> In line with the final provisions in Article 405 of the Law on banking (ZBan-2) (Ur. l. RS No 25/15), the DGS is regulated in Chapter 8 of the Law on banking (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, 96/13 and 25/15 – ZBan-2).

1.3 The draft law repeals the relevant provisions of the Law on banking, and the new scheme will be now governed by a separate legislative act. The DGS system will entail the establishment of a deposit guarantee fund (hereinafter referred to as the 'Fund'), and the procedures for payment of unavailable guaranteed deposits in the failing bank and, as the case may be, for the financing of resolution or compulsory winding-up measures in which depositors continue to have access to their guaranteed deposits. The new scheme will be financed on an ex ante basis. It will be administered by Banka Slovenije, which is the designated authority for the DGS. Banka Slovenije will be responsible for the following<sup>4</sup>.

- (i) Establishing and managing the Fund. The Fund will not be a legal entity, but will be set up as a dedicated pool of assets with its own capacity, by law, to be the holder of certain rights and obligations, and to be a party to legal proceedings, that will be managed by Banka Slovenije. The Fund will be managed separately from other assets and liabilities that Banka Slovenije manages on its own behalf or on behalf of third parties, and Banka Slovenije will not be liable for the obligations of the Fund. In its capacity as manager of the Fund, Banka Slovenije will make decisions on the operation of the Fund, and will represent the Fund vis-à-vis third parties<sup>5</sup>. Management of the Fund by Banka Slovenije will include, in particular, the following tasks: (a) determining the target level of the Fund, whereby its minimum level will, by 3 July 2024, amount to 0.8 % of all guaranteed deposits in Slovenia; (b) determining the level of, and collecting, the upfront contributions and the extraordinary contributions to the Fund of each participating bank, taking account of the ECB's competences<sup>6</sup> arising from Council Regulation (EU) No 1024/2013<sup>7</sup>; (c) determining the investment policy of the Fund and investing its assets; and (d) entering into alternative financing arrangements for the Fund, if necessary. While the financial resources of the Fund will be ensured primarily by means of regular and, if necessary, extraordinary contributions by participating banks as well as income from the Fund's investments, the Fund's financial resources may also include (i) borrowing from the market, in particular through issuing bonds, and (ii) other loans. Temporary financing may be provided to the Fund also by the State<sup>8</sup>.
- (ii) Establishing, verifying, also through stress testing, and updating procedures and arrangements for paying out on guaranteed deposits, including determining the amounts to be paid out on guaranteed deposits and providing relevant information to the bank appointed by Banka Slovenije to make payments to depositors.
- (iii) Activities related to the use of the Fund's assets in resolution or compulsory winding-up measures where depositors continue to have access to their guaranteed deposits.

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<sup>4</sup> See Articles 21 and 27 of the draft law, listing the tasks of Banka Slovenije, which are further described in individual Articles of the draft law.

<sup>5</sup> Such a set up was also envisaged in the earlier draft legislative act proposing, inter alia, amendments to the current DGS, on which the ECB issued Opinion CON/2014/79 (see paragraphs 1.5, 4 and 6 of that opinion). The amendments relating to the DGS were, however, not adopted at the time. All ECB opinions are published on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu).

<sup>6</sup> See Articles 31(5) and 32(4) of the draft law.

<sup>7</sup> Council 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).

<sup>8</sup> See Article 30 of the draft law.

- (iv) Supervision of banks as regards their obligations arising from their participation in the DGS.
  - (v) Drawing up the accounts of the Fund<sup>9</sup> and preparing and publishing, every year, a report on the activities related to the operation of the DGS<sup>10</sup>.
- 1.4 Costs incurred by Banka Slovenije in performing its tasks as administrator of the DGS and, more specifically, as manager of the Fund, will be met from the Fund or from charges levied on participating banks<sup>11</sup>.
- 1.5 Further, the draft law provides that Banka Slovenije may, exceptionally, grant a loan to the Fund if the Fund is unable, taking into account the conditions on the financial markets and the breakdown of investments of the Fund, to ensure the necessary liquidity to meet its obligations under the draft law in a timely manner and without disproportionate losses, which could in turn threaten the stability of the financial system. Such loans may, taking into account Article 123 of the Treaty, be granted by Banka Slovenije only if the following conditions are met: (i) the loan is short-term; and (ii) the loan is based on adequate collateral<sup>12</sup>.

## 2. General observations

- 2.1 The ECB supports the establishment of an ex ante funded DGS in Slovenia, in line with the common framework for DGSs laid down in Directive 2014/49/EU.
- 2.2 The ECB stresses, however, that this opinion does not address whether the draft law effectively implements the Directive 2014/49/EU in Slovenian law. Rather, the ECB focuses on those provisions that may impact on the role and tasks of Banka Slovenije as a central bank and as a member of the Eurosystem and the European System of Central Banks (ESCB).
- 2.3 The ECB has developed the guidance set out in paragraphs 2.3.1 to 2.3.3 on the basis of which it may decide whether a new task conferred on an NCB is to be considered a central banking task or a government task for the purposes of assessing such conferral against the prohibition of monetary financing<sup>13</sup>. This guidance applies to genuinely new tasks that either did not exist in the past or did not form an integral part of the central banking tasks assigned to an NCB in the past. In recognition of the different Member States' legal frameworks, central banking traditions and national set-ups, the tasks currently discharged by an NCB as central banking tasks are not reviewed and recategorised, but may be reassessed if they are subject to legislative amendments of substance. In this regard, the ECB notes that the draft law changes some of the essential elements of the Slovenian DGS. While the tasks currently performed by Banka Slovenije in relation to the operation of the Slovenian DGS are similar in certain respects to the tasks conferred on Banka Slovenije by the draft law, the tasks conferred on Banka Slovenije by the draft law are substantially wider in scope and it is appropriate, therefore, to assess whether those new tasks are compatible with the prohibition of monetary financing under Article 123 of the Treaty. The concrete assessment of

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<sup>9</sup> See Article 40 of the draft law .

<sup>10</sup> See Article 21(5) of the draft law .

<sup>11</sup> See Article 24 and Article 27(5) of the draft law .

<sup>12</sup> See Article 35 of the draft law .

<sup>13</sup> See Opinion CON/2015/22.

whether Banka Slovenije's new tasks in the operation of the DGS are to be considered central banking tasks or government tasks is undertaken in paragraph 3.1.

### 2.3.1 *General considerations*

*First*, the principle of financial independence requires that Member States may not put their NCBs in a position in which they have insufficient financial resources to carry out their ESCB or Eurosystem-related tasks, as applicable.

*Second*, central banking tasks comprise, in particular, those tasks that are related to the tasks listed in Article 127(2), (5) and (6) of the Treaty.

*Third*, new tasks conferred on an NCB which are atypical of NCBs' tasks, or which are clearly discharged on behalf of and in the exclusive interest of the government or of other public entities, should be considered government tasks. In that context, a distinction should be drawn between liquidity and solvency-related tasks of NCBs. While, for the purposes of the monetary financing prohibition, solvency support is a government task, liquidity-related tasks, the ultimate objective of which are to finance the economy, are central banking tasks.

### 2.3.2 *Specific considerations*

In principle, tasks related to a DGS can be assigned to an NCB provided that they do not undermine its independence in accordance with Article 130 of the Treaty<sup>14</sup>. As far as central bank involvement in a DGS is concerned, in particular, funding arrangements for a DGS must comply with the monetary financing prohibition laid down in the Treaty, and in particular with the prohibition of NCBs providing overdraft facilities or any type of credit facility within the meaning of Article 123 of the Treaty<sup>15</sup>. The same is true with regard to the financing of the costs of operating the DGS.

An important criterion for qualifying a new task as a government task is the impact of the task on the institutional, financial and personal independence of the NCB. In particular, the following should be taken into account.

*First*, it should be assessed whether the performance of the new task creates inadequately-addressed conflicts of interests with existing central banking tasks, and does not necessarily complement those existing central banking tasks. If a conflict of interest arises between existing and new tasks, there should be sufficient mitigation in place to adequately address that conflict. Complementarity between the new task and existing central banking tasks should not, however, be interpreted extensively, so as to lead to the creation of an indefinite chain of ancillary tasks. Complementarity should also be examined from the point of view of the financing of those tasks.

*Second*, it should be assessed whether without new financial resources the performance of the new task is disproportionate to the financial or organisational capacity of the NCB and may negatively impact its capacity to properly perform existing central banking tasks.

*Third*, it should be assessed whether the performance of the new task does not fit into the institutional set-up of the NCB in the light of central bank independence and accountability considerations.

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<sup>14</sup> See Opinion CON/2015/52.

<sup>15</sup> See paragraph 9.3 of Opinion CON/2011/12.

*Fourth*, it should be assessed whether the performance of the new task gives rise to substantial financial risks.

*Fifth*, it should be assessed whether the performance of the new task exposes the members of the NCB's decision-making bodies to political risks which are disproportionate and which may impact on their personal independence and, in particular, the guarantee of the term of office under Article 14.2 of the Statute of the European System of Central Banks and of the European Central Bank.

- 2.3.3 Any final assessment on the qualification of a task conferred on an NCB as either falling within the scope of a central banking task or a government task will be guided by the objective of ensuring the consistent application of the prohibition of monetary financing within the Eurosystem and the ESCB to the extent that it applies to its members.

### 3. Specific observations

#### 3.1 *Conferral on Banka Slovenije of tasks related to the DGS*

The draft law designates Banka Slovenije as the authority with responsibility for administering the new DGS and within that scheme for managing the Fund. The draft law adapts and extends Banka Slovenije's current DGS-related tasks and responsibilities. In light of the guidance set out in paragraphs 2.3.1 to 2.3.3, it is appropriate to assess whether Banka Slovenije's tasks and responsibilities in this field are compatible with the monetary financing prohibition.

##### 3.1.1 *New tasks*

With the revised set-up of the DGS, Banka Slovenije's existing tasks as described in paragraph 1.2 will be adapted and more comprehensively regulated under the new DGS, in particular to include the tasks set out in paragraph 1.3.

##### 3.1.2 *Principle of financial independence*

The principle of financial independence requires an NCB to have sufficient means not only to perform its ESCB-related tasks but also its own national tasks (e.g. financing its administration and own operations)<sup>16</sup>. When allocating specific non-ESCB related tasks to the NCBs, such as tasks in the area of deposit protection, additional human and financial resources must also be allocated so that these tasks can be carried out in a manner that will not affect the NCBs' operational capacity to perform its ESCB-related tasks<sup>17</sup>. The ECB notes that the draft law stipulates that Banka Slovenije's actual costs for operating the DGS are to be covered by means of the payment by participating banks of a sum equivalent to the annual costs related to management of the DGS<sup>18</sup> and, specifically for managing the Fund, directly from the Fund<sup>19</sup>. The ECB welcomes the fact that the draft law provides for the financing of costs related to Banka Slovenije's DGS-related tasks from participating banks' contributions and charges. The ECB thus understands that all expenses

<sup>16</sup> See the ECB's 2014 Convergence Report, p. 25. See also paragraph 3.1.5 of Opinion CON/2009/93, paragraph 3.1 of Opinion CON/2011/5, paragraph 4 of Opinion CON/2012/74, and paragraph 4 of Opinion CON/2013/29.

<sup>17</sup> See, for example, paragraph 4 of Opinion CON/2012/74.

<sup>18</sup> See Article 24 and Articles 27(5) and 41(4) of the draft law .

<sup>19</sup> See point (3) of Article 27(3) and Article 27(5) of the draft law .

related to functions to be performed by Banka Slovenije as the designated authority for the DGS will be fully covered by the participating banks. Against this backdrop, the new tasks entrusted to Banka Slovenije should not affect the resources it currently allocates for the performance of its monetary policy and other existing tasks. However, with regard to the recovery of the costs by way of an annual invoice or by recovering them directly from the Fund, the ECB notes that restoration of the costs related to the management of the DGS should be done in a timely manner, and invites the consulting authority to consider a cost recovery mechanism that would mirror the system for payment of costs related to Banka Slovenije's supervisory or resolution tasks<sup>20</sup>.

### 3.1.3 *Links to tasks listed in Article 127(5) of the Treaty*

As the ECB has observed in previous opinions<sup>21</sup>, central banks are in general in a good position to take on responsibility for contributing to financial stability, given their insight into money and financial market developments and their involvement in payment systems and monetary policy operations. At the same time, DGSs are a key element of the financial safety net. Therefore, the governance framework should ensure that the important function of such schemes is carried out professionally and efficiently. Moreover, effective coordination with the overall role of central banks in safeguarding financial stability should be ensured. This aim may be achieved through, among other things, maintaining adequate involvement of the central bank in the governance and regulation of the national DGS.

### 3.1.4 *Atypical tasks*

A number of Member States have conferred on their NCBs a role in the operation of their DGSs. The tasks of an NCB with regard to the operation of the DGS could therefore be regarded as tasks that are not atypical of a central bank. As noted in paragraph 1.2, Banka Slovenije is also responsible for tasks related to the operation of the current Slovenian DGS.

### 3.1.5 *Discharge of tasks on behalf of and in the exclusive interest of the Government or of other public entities*

A number of central banks in the ESCB perform certain tasks related to the operation of DGSs. These tasks are closely linked to their task of contributing to financial stability, and may therefore be regarded as being not atypical of a central bank. At the same time, it is noted that, where an NCB performs the entire range of administrative and operational tasks related to the functioning of a DGS, that NCB is carrying out not only tasks which are related to financial stability matters, but also tasks more typically pertaining to the governmental authority, as reflected in the obligation of Member States under Directive 2014/49/EU to ensure that a DGS is introduced and officially

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<sup>20</sup> The actual costs of supervisory and resolution tasks performed by Banka Slovenije are recovered from supervised banks through the payment of an annual fee in two instalments. Banka Slovenije issues one invoice for payment of the first instalment before 30 September of the current year based on the projected cost of supervision for the year, and the invoice for the second instalment by 31 March of the following year for the previous year, taking into account the actual costs of supervision in the past year (see Article 238 of the ZBan-2). For the management of the national resolution fund, Banka Slovenije is separately repaid for management costs directly from the resolution fund itself, by deducting monthly from the fund the average of the projected costs, while following the end of a financial year, Banka Slovenije calculates the actual costs incurred in the previous financial year and records any difference in comparison to the projected costs as an income/expense of the resolution fund in the current financial year (see Article 5 of Banka Slovenije's Decision on the resolution fund investment policy and management costs, issued on the basis of the Law on the Bank Resolution Authority and Fund (ZOSRB) (Ur. l. RS No 97/14 and 91/15).

<sup>21</sup> See paragraph 3.2.3 of Opinion CON/2015/52, paragraph 4.2 of Opinion CON/2008/51 and paragraph 3.3 of Opinion CON/2007/26.

recognised within its territory. Insofar as Banka Slovenije is entrusted with such governmental (as distinct from central banking) functions, the respective tasks would be discharged by Banka Slovenije in the exclusive interest of the Government. The ECB interprets the draft law as reflecting this balance between governmental and central banking tasks in the field of DGSs by, on the one hand, establishing the Fund as a separate pool of assets outside the legal personality of Banka Slovenije and, on the other hand, designating Banka Slovenije as the sole authority responsible for operating the DGS. In the exercise of its public functions under the draft law, Banka Slovenije would act on its own behalf, and not on behalf of any other administrative authority.

3.1.6 *Extent to which conflicts of interests with existing Banka Slovenije tasks are addressed and the performance of tasks fits into Banka Slovenije's institutional set-up in the light of central bank independence and accountability considerations*

Pursuant to the draft law, Banka Slovenije is required to adopt internal rules, to be published on its website, establishing organisational arrangements for the performance of its DGS-related tasks such as to prevent conflicts of interests arising between the tasks performed by Banka Slovenije with regard to managing the DGS and its other duties<sup>22</sup>. The ECB expects these internal rules to properly address any conflicts of interest ensuing from the tasks conferred on Banka Slovenije in relation to the DGS. The performance of Banka Slovenije's tasks in the context of the new DGS fits into Banka Slovenije's institutional set-up, which has already been adapted to take account of its functions in the operation of the current DGS and in asset management<sup>23</sup>.

The performance of the DGS-related tasks does not raise any issues arising out of accountability considerations. The draft law requires Banka Slovenije to draw up financial accounts of the Fund, have them audited by an authorised auditor and include them in a report on the activities related to the operation of the DGS, to be prepared on an annual basis and published on its website<sup>24</sup>.

3.1.7 *Extent to which the performance of tasks is proportionate to Banka Slovenije's financial and operational capacity and its ability to perform ESCB-related tasks*

In order to remain financially independent, Banka Slovenije must have sufficient means to carry out, not only its ESCB-related tasks from an operational and financial point of view, but also its national tasks. In this regard, the ECB welcomes the fact that the draft law specifies that Banka Slovenije's actual costs arising from its DGS-related tasks, including the management of the Fund, are to be reimbursed by the banks participating in the DGS, or directly by the Fund. However, as noted above, with regard to the recovery of the costs by way of an annual invoice, the ECB notes that such reimbursement related to the management of the DGS should be done in a timely manner and invites the consulting authority to consider a cost recovery mechanism similar to the one in place for the NCB's supervisory and resolution functions<sup>25</sup>.

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<sup>22</sup> See Article 5(2) and (3) of the draft law .

<sup>23</sup> Banka Slovenije is entrusted with the task of managing the assets held in the national resolution fund on the basis of the Law on the Bank Resolution Authority and Fund, also adopted as a separate legal act and not as part of the Law on banking as initially envisaged (see also Opinion CON/2014/79). The Law on the Bank Resolution Authority and Fund was adopted shortly after the publication of Opinion CON/2014/79, in December 2014.

<sup>24</sup> See Article 21(5) and Article 40 of the draft law .

<sup>25</sup> For more details see footnote 20 above.

### 3.1.8 *Extent to which the performance of tasks involves substantial financial risks*

The ECB welcomes the fact that the draft law clarifies the liability regime applicable to Banka Slovenije when acting in its capacity as operator of the DGS<sup>26</sup>. However, and in particular since Banka Slovenije has been entrusted with a full range of administrative and operational tasks related to the functioning of the DGS, which may be regarded as government tasks, the consulting authority may wish to consider whether any limitations of liability for a potential mismanagement of the DGS or the Fund, are warranted such as to shield Banka Slovenije from any substantial financial risks that may potentially arise following an allegation of misconduct on the part of Banka Slovenije.

### 3.1.9 *Conclusion*

The draft law takes due account of the concerns that may arise due to entrusting Banka Slovenije with the full range of tasks in relation to operating the DGS, which may be regarded as a mixture of central banking financial stability and governmental tasks. In this respect, the draft law takes due account of the need to ensure that Banka Slovenije will not finance the DGS, including with regard to any backstop financing (if extraordinary contributions from the participating banks as well as funds from the other sources are unavailable or insufficient) which should be ensured by the State. A few elements in the draft law could, however, be further developed. In particular, while it is noted that all expenses related to functions to be performed by Banka Slovenije as the operator of the DGS will be fully covered, the compensation of the costs related to the management of the DGS and the Fund should be done in a timely manner. Thus, the ECB invites the consulting authority to consider a cost recovery mechanism that would mirror the system for payment of costs related to Banka Slovenije's supervisory or resolution tasks as indicated in paragraph 3.1.2 above. Further, it could be considered whether any limitations of liability for mismanagement of the DGS or the Fund, respectively, would be warranted such as to shield Banka Slovenije from any substantial financial risks that may potentially arise following an allegation of misconduct on the part of Banka Slovenije.

### 3.2 *Provision of liquidity from Banka Slovenije to the Fund*

Separately from Banka Slovenije's role in the operation of the DGS, the draft law allows for the provision of liquidity by Banka Slovenije to the Fund by way of exceptional loans<sup>27</sup>. As the ECB has repeatedly stated in the past, any national legislation that provides for a national DGS to be financed by an ESCB national central bank would only be compatible with the monetary financing prohibition under Article 123 of the Treaty where certain restrictive conditions are met, i.e. such financing is short-term, it addresses urgent situations, systemic stability issues are at stake and decisions are made at the NCB's discretion<sup>28</sup>. The ECB understands that the draft law takes account of these criteria.

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<sup>26</sup> See also paragraph 6 of Opinion CON/2014/79.

<sup>27</sup> See Article 35 of the draft law .

<sup>28</sup> See the ECB's 2014 Convergence Report, p. 30. See also, most recently, paragraph 3.1 of Opinion CON/2016/3 and paragraph 2.3.2 of Opinion CON/2015/52, as well as paragraph 3.2 of Opinion CON/2015/40; paragraph 4.1 of Opinion CON/2015/17; and paragraph 2.2 of Opinion CON/2014/86.

3.3 *Involvement of the ECB in determining the methodology for calculating regular contributions*

Article 31(5) of the draft law provides for the involvement of the ECB in determining the methodology to be used for calculating regular contributions, based on Article 13(2) of Directive 2014/49/EU. Such reference should not be construed as conferring on the ECB the tasks in question. The ECB notes that only Regulation (EU) No 1024/2013 confers prudential tasks on the ECB, in accordance with Article 127(6) of the Treaty.

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

Done at Frankfurt am Main, 3 February 2016.

[signed]

*The President of the ECB*

Mario DRAGHI