



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 9 July 2019

on the payment of funds to uninformed holders of subordinated bonds and minority shareholders who held shares in banks in which the Republic of Slovenia had a majority shareholding affected by Banka Slovenije's extraordinary measures

(CON/2019/26)

Introduction and legal basis

On 10 May 2019 the European Central Bank (ECB) received a request from the President of the Slovenian National Assembly for an opinion on a draft law on payment of funds to uninformed holders of subordinated bonds and minority shareholders who held shares in banks in which the state had a majority shareholding affected by Banka Slovenije's extraordinary measures adopted on 17 December 2013, 19 November 2014 and 16 December 2014 (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 indent of Article 2(1) of Council Decision 98/415/EC¹, as the draft law relates to Banka Slovenije, as well as the specific tasks conferred upon the ECB pursuant to Article 127(6) of the Treaty 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

- 1.1 The purpose of the draft law is to compensate the minority shareholders of credit institutions in which the state had a majority shareholding for politically motivated, non-economical and ineffective governance of the relevant credit institutions by the Republic of Slovenia and to compensate the holders of qualified liabilities who were misled into investing in subordinated bonds by those credit institutions.
- 1.2 The draft law sets out the grounds and procedural rules for payment of compensation to the minority shareholders in the relevant credit institutions and holders of qualified liabilities in the relevant credit institutions which were written off as a consequence of the extraordinary measures concerning the recapitalisation of six Slovenian credit institutions adopted by Banka Slovenije on 17 December 2013, 19 November 2014 and 16 December 2014. Banka Slovenije ordered the

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).

credit institutions to write-off all eligible liabilities, including equity capital, hybrid capital and subordinated debt, without offering compensation.

- 1.3 The beneficiaries under the draft law are natural persons who were: (1) minority shareholders of Nova Kreditna banka Maribor d.d. or Nova Ljubljanska banka d.d. on 17 December 2013 and registered in the central registry of dematerialised securities as such, and (2) holders of qualified liabilities in the credit institutions affected by the relevant extraordinary measures adopted by Banka Slovenije on 17 December 2013, 19 November 2014 and 16 December 2014.
- 1.4 The draft law regulates the calculation of payments and limits the amount of payments to be made to beneficiaries to a maximum of EUR 10 000 per shareholder and EUR 100 000 per qualified liability. The amount to be paid to each shareholder is determined by multiplying the number of ordinary, registered, freely transferable shares with voting rights owned by each shareholder that was registered in the central registry of dematerialised securities on 17 December 2013 by the book value of such shares as on 31 December 2012. The basis for the compensation to be paid to the former holders of qualified liabilities is the principal amount increased by the amount of interest agreed between the creditor and the bank at the time the purchase agreement was concluded. The beneficiaries will be compensated within 30 days after the draft law enters into force. Moreover, the draft law specifies that in cases where beneficiaries are awarded damages in other court proceedings, any amounts paid under the draft law would be set off against such damages.
- 1.5 Banka Slovenije has an obligation under the draft law to gather information and data regarding each beneficiary who is a holder of qualified liabilities affected by the relevant extraordinary measures adopted by Banka Slovenije, including the name and address of such beneficiaries and the date and amount of their claims. Banka Slovenije must provide the detailed information to the relevant ministry within three working days after the adoption of the draft law.
- 1.6 The draft law provides that all costs related to the payments will be paid by the Republic of Slovenia.

2. Observations

- 2.1 The ECB understands that the information and data to be provided by Banka Slovenije under the draft law is limited to information and data relating to the holders of qualified liabilities that were affected by the relevant extraordinary measures adopted by Banka Slovenije. This information and data were obtained on the basis of Slovenian legislation before the Single Supervisory Mechanism was established pursuant to Council Regulation (EU) No 1024/2013² and, in any case, will not be used under the draft law in a way that would affect the tasks conferred upon the ECB pursuant to that Regulation.
- 2.2 The ECB understands that the draft law constitutes a cooperation arrangement between Banka Slovenije and the relevant ministry responsible for the implementation of the draft law. The draft

² 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).

law provides that Banka Slovenije must provide information and data relating to the holders of qualified liabilities that were affected by the relevant extraordinary measures adopted by Banka Slovenije to the authorities. In this respect, the ECB notes the principle of financial independence of national central banks which requires that Member States do not put their national central banks in a position where they have insufficient financial resources to carry out their Eurosystem-related tasks, both from an operational and a financial perspective³. The ECB understands that the cooperation arrangement with the relevant ministry should not create any material financial risks for Banka Slovenije in this respect since the duty of Banka Slovenije is confined to providing the relevant information on a one-off basis to the relevant ministry within three working days after the draft law is adopted. Should the practical implications of the draft law cause a regular, lasting and substantial engagement of Banka Slovenije's resources to the extent that such assistance constitutes a new task for Banka Slovenije, then the ECB must be informed in order to reassess the draft law and the obligations imposed on Banka Slovenije in relation to the prohibition on monetary financing under Article 123 of the Treaty.⁴

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

Done at Frankfurt am Main, 9 July 2019.

[signed]

The President of the ECB

Mario DRAGHI

³ See ECB Convergence Report 2016, p.25.

⁴ See paragraph 2.5 of Opinion CON/2018/8. All ECB opinions are published on the ECB website at www.ecb.europa.eu.