Introduction and legal basis

On 4 October 2023 the European Central Bank (ECB) received a request from the Slovenian Minister for Finance for an opinion on a draft legislative provision imposing a temporary tax on the balance sheets of banks and savings banks (hereinafter the ‘draft provision’), introduced as part of a draft Law on reconstruction, development and provision of funds1 introducing other temporary measures aimed at alleviating the consequences of the floods and landslides experienced in Slovenia in August 2023. On 30 October 2023, the ECB received from the Ministry of Finance an updated version of the draft provision.2

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/EC3, as the draft provision concerns Banka Slovenije, rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets, and the ECB’s tasks concerning the prudential supervision of credit institutions pursuant to Article 127(6) of the Treaty. 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 provision

1.1 The draft provision introduces an additional tax on the balance sheets of all banks and savings banks that provide banking services in Slovenia4. The tax is introduced for the five calendar years 2024-2028, and it will be secured for the co-financing of post-flood and landslide reconstruction and development measures and projects.

1.2 The tax is determined by applying a rate of 0.2 % to the tax base, defined as the total value of assets in the statement of financial position of a bank’s balance sheet. For this purpose, a bank’s balance

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1 Zakon o obnovi, razvoju in zagotavljanju finančnih sredstev.
2 Now introduced as Article 59 of the draft Law on reconstruction, development and provision of funds.
4 Under the draft provision, the following entities will be subject to the additional tax: i) domestic banks and savings banks that have obtained a licence to perform banking services; ii) banks and savings banks established in another Member State that operate in Slovenia via a business unit as defined in the Law on corporate income tax; and iv) third-country banks and savings banks which have a branch in Slovenia. See the fourth paragraph of the draft provision.
sheet is calculated as an average value of balances as at the last day of each month in the applicable tax period.

1.3 The amount of the tax for each bank will not, in any case, be greater than 30% of a bank’s annual profit before the recognition of the amount levied on account of the additional balance sheet tax.

1.4 The tax is to be paid for the calendar year 2024 and for a total period of five calendar years until 2028. Banks subject to the tax are to pay the tax within 30 days of submitting their tax returns, which must be submitted to the tax authority by 31 March for the preceding calendar year, starting on 31 March 2025. For tax periods that are shorter than 12 months, the taxpayer’s tax liability is proportional to the length of the tax period in relation to the calendar year.

1.5 The draft provision allows for the application of certain deductions to the amount of the additional tax. First, banks may deduct any amount of payments to address the consequences of the natural disaster that affected Slovenia in August 2023 made in the tax period to a dedicated account of the Republic of Slovenia. Moreover, banks may also deduct an amount equal to the difference between the amount of corporate income tax paid under the higher rate set by the draft Law on reconstruction, development and provision of funds and the amount of corporate income tax due under the applicable rate set out in Article 60 of the Law on corporate income tax. The total amount of both of these deductions cannot exceed the tax amount for the tax period in question.

1.6 Under the draft provision, Banka Slovenije will prepare an annual report to be submitted to the Government of the Republic of Slovenia on the impact of the tax on the stability of the banking system in the Republic of Slovenia. In the event of a significant negative impact, Banka Slovenije is to propose the adoption of appropriate measures to mitigate these consequences. The explanatory memorandum accompanying the draft provision further explains that these measures encompass both legislative amendments, such as reducing the tax rate or abolishing the tax, as well as regulatory measures within Banka Slovenije’s competence.

1.7 According to the explanatory memorandum, the aim of the draft provision is to achieve a fairer distribution of the inflation burden between credit institutions and households, considering that households have experienced a decrease in purchasing power. The explanatory memorandum also states that the rationale for introducing an additional tax on banks’ balance sheets is based on the fact that banks are engaged in a specific activity and have a particular position in the economy, and their setting of business policy is influenced by the implementation of monetary policy.

1.8 The explanatory memorandum makes a number of specific points with regard to the introduction of the tax. First, the banking sector has benefited in recent years from relatively higher net interest profits, which were the result of higher interest rates introduced by the ECB in its implementation of monetary policy measures aimed at achieving a timely return of inflation to the target across the euro area. Second, in recent years the banking sector has suffered the least damage compared with most

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5 Article 42 of the draft Law on reconstruction, development and provision of funds introduces an amendment to the rate of the corporate income tax.

6 Zakon o davku od dohodkov pravnih oseb (Uradni list RS, št. 117/06, 56/08, 76/08, 5/09, 96/09, 110/09 – ZDavP-2B, 43/10, 59/11, 24/12, 30/12, 94/12, 81/13, 50/14, 23/15, 82/15, 68/16, 69/17, 79/18, 66/19, 172/21 in 105/22 – ZZNŠPP).
other sectors of the economy through the coronavirus (COVID-19) epidemic, the energy crisis and, most recently, the Slovenian natural disaster of August 2023. Third, the introduction of the tax is also warranted given the current high profitability of banks, which creates a public expectation that banks will share the burden of high inflation and demonstrate solidarity with the rest of society by providing additional funds to address the extensive material damage caused by the recent floods and landslides. Fourth, owing to underdeveloped capital markets in Slovenia, the majority of household savings have been deposited with banks, without the latter having to increase interest rates to attract such deposits.

1.9 The explanatory memorandum further states that the introduction of the tax should not adversely affect the stability of the banking system or endanger individual credit institutions. Moreover, it should not lead to a material negative response from domestic and foreign investors.

1.10 The explanatory memorandum also provides a preliminary analysis of the total net effect of the tax on the Slovenian banking sector, which is estimated at EUR 90-100 million in the first year of application of the draft provision.7

1.11 Last, the explanatory memorandum points out that the draft provision has been prepared with due consideration of past ECB opinions on similar tax regimes in other Member States.

2. General observations

2.1 The ECB recently adopted opinions on a draft Italian law on the imposition of an extraordinary tax on credit institutions8, a draft Lithuanian law establishing a temporary solidarity contribution applicable to credit institutions9 and a draft Spanish law on the imposition of temporary levies on operators in the energy sector, credit institutions and financial credit establishments10. In these opinions, the ECB considered legislative initiatives introducing temporary levies and taxes from the monetary policy, financial stability and prudential supervision perspectives.

2.2 The ECB understands that the additional tax envisaged by the draft provision will affect the amount of corporate income tax paid by the banks in question on account of the additional tax reducing the tax base of the banks in respect of the corporate income tax, defined as the tax on the net profits of each bank. To this end, the ECB understands that the maximum cap of 30% of a bank’s net profits will be applied after taking into account the deductions allowed under the draft provision and prior11

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7 As stated in the explanatory memorandum, the total net effect of the tax may be further impacted in subsequent years by the concurrent increase of the corporate income tax rate, which currently stands at 19% of the tax base, as defined in the Law on corporate income tax (Zakon o davku od dohodkov pravnih oseb (Uradni list RS, št. 117/06, 56/08, 76/08, 5/09, 96/09, 110/09 – ZDavP-2B, 43/10, 59/11, 24/12, 30/12, 94/12, 81/13, 50/14, 23/15, 82/15, 68/16, 69/17, 79/18, 66/19, 172/21 in 105/22 – ZZNŠPP)).
8 See Opinion CON/2023/26. All ECB opinions are published on EUR-Lex.
10 See Opinion CON/2022/36.
11 As clarified in the explanatory memorandum’s comments on the tenth paragraph of the draft provision.
to applying the corporate income tax on the tax base\textsuperscript{12}, reduced by the amount levied for the additional tax on the balance sheets of banks.

2.3 The ECB has previously opined on a Slovenian tax on the total value of a bank’s balance sheet\textsuperscript{13}. The draft provision resembles that earlier tax from the point of view of the tax base, which was also defined as the average of balances held on the last day of each month in a calendar year\textsuperscript{14}. Despite this similarity, the rationale and the macroeconomic context surrounding the adoption of the two taxes is very different and merits separate assessment.

3. Monetary policy context

3.1 The ECB understands that the introduction of the tax is motivated by the higher net profits recorded by banks, whose profit levels have benefited from higher net interest incomes since the start of the tightening cycle.

3.2 The euro area inflation rate reached record levels over the course of 2022 and posed significant challenges for the conduct of monetary policy. Guided by its primary objective of maintaining price stability, the ECB has taken determined action to ensure a timely return of inflation to the 2% target over the medium term. Key ECB policy rates have been raised by a cumulative 450 basis points between July 2022 and September 2023, with the intention of dampening demand and guarding against the risk of a persistent upward shift in inflation expectations. In parallel, net purchases of assets have ended, the asset purchase programme’s portfolio is declining at a measured and predictable pace, and the ECB stands ready to adjust all instruments within its mandate to ensure that inflation returns to the ECB’s medium-term target and to preserve the smooth functioning of monetary policy transmission.\textsuperscript{15} Based on its latest October assessment, the ECB considers that the key ECB interest rates have reached levels that, maintained for a sufficiently long duration, will make a substantial contribution to the timely return of inflation to the 2% medium-term target.

3.3 It is important to keep in mind that monetary policy operations always have some distributional implications, including through their effects on incomes and the profitability of credit institutions. From a monetary policy perspective, credit institutions play a special role in ensuring the smooth transmission of monetary policy measures to the wider economy. In this context, maintaining an adequate capital position helps credit institutions to avoid abrupt adjustments to their lending to the real economy.\textsuperscript{16}

3.4 Evidence shows that net interest income typically tends to expand on impact as policy rates increase. This effect is faster the greater the weight of short-term or variable interest rate loans within bank

\textsuperscript{12} The tax base laid down in the Law on corporate income tax (Zakon o davku od dohodkov pravnih oseb, Uradni list RS, št. 117/06, 56/08, 76/08, 5/09, 96/09, 110/09 – ZDavP-2B, 43/10, 59/11, 24/12, 30/12, 94/12, 81/13, 50/14, 23/15, 82/15, 68/16, 69/17, 79/18, 66/19, 172/21 in 105/22 – ZZNSPP).

\textsuperscript{13} See Opinion CON/2011/31.

\textsuperscript{14} However, the draft law the subject of Opinion CON/2011/31 provided for a lower tax rate of 0.1%. Moreover, it provided that banks could reduce the tax by 0.2% of the amount of loans granted to non-financial corporations and sole traders.

\textsuperscript{15} See paragraph 2.1 of Opinion CON/2023/9 and paragraph 3.2 of Opinion CON/2023/26.

\textsuperscript{16} See paragraph 2.2 of Opinion CON/2022/36, paragraph 2.2 of Opinion CON/2023/9 and paragraph 3.3 of Opinion CON/2023/26.
balance sheets. However, as the tightening cycle proceeds, this positive income effect can be offset by lower lending volumes, a higher cost of funding, losses recorded in the securities portfolio and an increase in provisions resulting from potential deterioration of the quality of the credit portfolio. The realisation of downside risks to the economy may significantly reduce the repayment capacity of debtors and translate into lower bank profitability. The net effect of tighter monetary policy on bank profitability when measured across the policy cycle may therefore be less positive, or even negative, over an extended horizon.\(^{17}\)

3.5 The ECB takes note of the fact that, unlike tax regimes introduced in other Member States\(^ {18}\), the additional tax in Slovenia is not solely levied on net interest income\(^ {19}\) or a value related to the interest margin\(^ {20}\). Rather, the amount of tax due under the draft provision is determined by taking the entire balance sheet into account. Caution must be taken so that such tax base does not incentivise credit institutions to contract their balance sheet by reducing their lending activity beyond that which would be warranted from a monetary policy perspective. To this end, the ECB notes that a reduction in lending volumes has already been observed in Slovenia, and the introduction of the additional tax could further inhibit lending activity.

3.6 The ECB further notes that there is a maximum cap on the tax, defined as the amount equal to 30% of the total net profits of each bank. While the ECB understands\(^ {21}\) that this profit-related cap limits the imposition of the tax for less profitable banks in nominal terms and ensures that loss-making banks are exempt, it follows that the tax burden will be higher in relative terms to profits for less profitable banks whose tax liability is close to or bound by the cap. In all cases, it must be ensured that the additional tax does not impact the ability of individual credit institutions to build a strong capital base from retained earnings and adequately provision for increased impairments and a deterioration in credit quality.\(^ {22}\)

4. Financial stability context

4.1 The ECB has previously warned about possible negative effects of extraordinary tax regimes on financial stability\(^ {23}\) owing to such legislative measures having the potential to make it more difficult for credit institutions to build up additional capital buffers, as their retained earnings will be reduced, thus making them less resilient to economic shocks.\(^ {24}\) Moreover, this may lead to negative economic effects by limiting credit institutions’ ability to provide credit, contributing to less favourable terms for customers when providing loans and other services. It is essential that credit institutions have a

\(^{17}\) See paragraph 3.4 of Opinion CON/2023/26.


\(^{19}\) See paragraph 1.2 of Opinion CON/2022/36 and paragraph 1.5 of Opinion CON/2023/9.

\(^{20}\) See paragraph 1.1 of Opinion CON/2023/26.

\(^{21}\) See paragraph 5.2 of this Opinion.

\(^{22}\) See paragraph 2.3 of Opinion CON/2023/9 and paragraph 3.5 of Opinion CON/2023/26.


\(^{24}\) See paragraph 4.1 of Opinion CON 2023/26.
sound capital base in order for them to fulfil their role as credit intermediaries within the economy. Higher costs and reduced credit supply can adversely affect real economic growth.\textsuperscript{25}

4.2 The tax may make attracting new equity capital and wholesale funding more costly for banks, as domestic and foreign investors may have less appetite to invest in Slovenian credit institutions that have a more uncertain outlook. Moreover, the additional balance sheet tax is introduced for a time period of five financial years, which may be viewed unfavourably even compared with similar tax regimes where the additional temporary tax had been introduced as a one-off contribution\textsuperscript{26} or for a period of no more than two financial years\textsuperscript{27}. The extraordinary tax may lead to fragmentation in the European financial system because of the heterogeneous nature of such taxes for the banking sector.

4.3 Despite the observed favourable liquidity positions of Slovenian banks in recent years, notable differences exist among individual credit institutions.\textsuperscript{28} Moreover, banks’ resilience when it comes to solvency and profitability has been assessed as a medium risk. In the light of the higher recent profits recorded by banks, they now have the capacity to improve their capital positions, and it would be favourable for banks to retain their profits and thus improve their resilience. Any legislative measures that affect banks’ retained earnings capacity should therefore appropriately recognise that some banks have chosen to maintain a larger proportion of their retained earnings\textsuperscript{29} rather than, for example, opting for a higher distribution of dividends.

4.4 The ECB recommends that in order to assess whether its application poses risks to financial stability, and, in particular, whether it has the potential to impair the banking sector’s resilience and cause market distortion, the draft provision needs to be accompanied by a thorough analysis of potential negative consequences for the banking sector.\textsuperscript{30} This analysis should detail, in particular, the specific impact of the tax on credit institutions’ longer-term profitability and capital base, access to funding and the provision of new lending, and its potential impact on liquidity.\textsuperscript{31}

4.5 While the explanatory memorandum already provides a preliminary analysis of the total net effect of the draft provision on the Slovenian banking sector, the additional tax is to apply over a five-year period and its impact will also depend on the applicable parameters and other possible legislative changes, regulatory measures or market conditions faced by banks in the coming years. While a careful consideration of the effects of the draft provision is needed prior to its taking effect, the ECB takes positive note that Banka Slovenije is to perform an annual analysis of the impact of the tax on the stability of the Slovenian banking system. The ECB understands that the Government would follow Banka Slovenije’s findings and/or recommendations based on this annual analysis.

\textsuperscript{25} See paragraph 4.1 of Opinion CON/2023/26.
\textsuperscript{26} See Opinion CON/2023/9 and Opinion CON/2023/26.
\textsuperscript{27} See Opinion CON/2022/36.
\textsuperscript{28} See the introductory remarks in Poročilo o finančni stabilnosti, Banka Slovenije, October 2023.
\textsuperscript{29} See the introductory remarks in Poročilo o finančni stabilnosti, Banka Slovenije, October 2023.
\textsuperscript{31} See paragraph 4.6 of Opinion CON/2023/26.
4.6 One further aspect to consider is the change in the methodology for determining the buffer for other systemically important banks, which will lead to an increased average value of the buffer for the Slovenian banking system and will require individual systemic banks to hold more capital. The higher level of the countercyclical capital buffer, which all banks and savings banks in the Slovenian banking system have to reach by the end of 2023, will have a similar effect.\(^\text{32}\)

5. **Considerations relating to the prudential supervision of credit institutions**

5.1 The ECB understands that the tax would apply to significant credit institutions directly supervised by the ECB and less significant credit institutions directly supervised by national competent authorities under the oversight of the ECB within the framework of the Single Supervisory Mechanism.

5.2 Caution must be taken to avoid scenarios where the tax would act as a further burden for less profitable banks or for banks that have recorded losses in the applicable tax period. Since the determination of the maximum amount of tax due under the draft provision applies only to scenarios where banks actually record profits, it is unclear whether this would prevent the tax being levied on the balance sheets of banks recording losses during the applicable tax period. To this end, the ECB would welcome further clarification as regards establishing a maximum amount of tax due under the draft provision in a context where the total profit, before the recognition of the tax, would be equal to or less than the amount of the tax payable under the draft provision. Concretely, the ECB would welcome clarification on whether, in cases where the net profits recorded by a bank are equal or are less than zero, the amount of tax paid under the draft provision also equals zero.

This opinion will be published on EUR-Lex.

Done at Frankfurt am Main, 2 November 2023.

[signed]

*The President of the ECB*

Christine LAGARDE

\(^{32}\) See Poročilo o finančni stabilnosti, Banka Slovenije, October 2023, introductory remarks and p. 75.