

Yves Mersch  
Member of the Executive Board

[COURTESY TRANSLATION<sup>1</sup>]

Mr Andrej Šircelj  
Minister of Finance  
Župančičeva 3  
1000 Ljubljana  
Slovenia

15 May 2020

Dear Mr Šircelj,

Thank you for your letter dated 22 April 2020, addressed to the President of the European Central Bank (ECB), informing the ECB about a draft Law on intervention liquidity measures for the Slovenian economy, which the Ministry of Finance prepared as an additional response to the COVID-19 outbreak. The ECB understands that the draft legislation has been adopted by the National Assembly of the Republic of Slovenia in an urgent procedure and has already entered into force.

With your letter you informed the ECB about the draft legislation, but did not request a formal consultation of the ECB pursuant to Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union (the “Treaty”).

The ECB understands that the main purpose of the now already adopted Law is to provide the necessary liquidity to the Slovenian economy by means of bank loans in order to mitigate the effects of the COVID-19 outbreak and prevent serious economic damage. The Law introduces loan guarantees to be provided by the Republic of Slovenia to banks for liquidity loans granted to companies in difficulty covering a certain proportion of the principal of the loan up to a total amount not exceeding EUR 2 billion. The State’s guarantee is stated to be irrevocable, unconditional and redeemable at the bank’s first written request, with payments under the guarantee being made from the State budget after the default. However, the Law envisages that the State guarantee may also be fulfilled by the issuance of bonds by SID Bank or the Republic of Slovenia. Such bonds would have to be issued taking into account the ECB’s conditions for the financing of financial institutions and taking into account Union law governing the credit risk protection. According to the Law, a special regulation setting conditions and criteria for the issuing of these bonds would be adopted and in this procedure the prior opinion of Banka Slovenije would be required.

The ECB was competent to be consulted on the draft legislation based on Articles 127(4) and 282(5) of the Treaty and Article 2(1) of Council Decision 98/415/EC<sup>2</sup>, which require national authorities to consult

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<sup>1</sup> The official ECB letter is addressed in the official language of the concerned Member State.

the ECB on draft legislative provisions concerning matters that fall within its fields of competence, including (1) national central banks (in this case, Banka Slovenije), (2) rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets, and (3) the ECB's tasks concerning the prudential supervision of credit institutions under Article 127(6) of the Treaty.

The ECB reiterates<sup>3</sup> that it fully understands, acknowledges and supports actions by the Member States intended to mitigate the grave consequences of the pandemic and understands the urgency of these actions. However, the Law contains a number of provisions falling within the ECB's competence which raise concerns. The ECB should have been consulted in advance so enabling the Ministry to take into consideration the ECB's comments.

First, the Law should take into account Banka Slovenije's obligations under the Eurosystem monetary policy framework, which should be carefully considered by the Ministry of Finance when structuring the system for granting State guarantees. The ECB understands that the bonds that would be issued as an alternative means of repayment of the guaranteed obligations and provided to credit institutions at the time of default of a loan would only be issued if they meet the requirements to be eligible for use as collateral in Eurosystem credit operations and if they are in line with Union rules on credit risk protection. The ECB further understands that the conditions for issuing the bonds would be specified in a regulation to be issued later on for which Banka Slovenije would provide its opinion in advance. The ECB notes that the role envisaged for Banka Slovenije in this respect would contravene Banka Slovenije's obligations under Article 58(6) of Guideline (EU) 2015/510 of the European Central Bank<sup>4</sup>, which prohibits Eurosystem central banks, including among others Banka Slovenije and the ECB, from providing any advice on the eligibility of assets to be used for Eurosystem credit operations in advance.

Second, it would need to be carefully considered whether issuing bonds as an alternative means of repayment of the guaranteed obligations with the purpose of banks using these bonds for refinancing purposes with the Eurosystem is in line with Article 123 of the Treaty. According to the explanatory memorandum accompanying the Law, the decision about the method of executing the guarantee is at the discretion of the State, which will take into account, in particular, liquidity possibilities under the Republic of Slovenia's budget. The explanatory memorandum further clarifies that with this instrument the costs for the budget and the impact on the public debt of the Republic of Slovenia are lower, and the flexibility of the financing of the Republic of Slovenia is increased.

Third, there is uncertainty about the treatment of the guarantee in the assessment of credit risk pursuant to Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>5</sup> (the "CRR"). The ECB understands that the decision on the method of executing the guarantee at the time it is called would be

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<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> See letter dated 2 April 2020 from Yves Mersch, Member of the Executive Board of the ECB, to Andrej Šircelj, Minister for Finance of the Republic of Slovenia, regarding the non-consultation of the ECB on an Act of 20 March 2020 on intervention measures relating to deferred payments of borrowers' obligations.

<sup>4</sup> Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (ECB/2014/60) (OJ L 91, 2.4.2015, p. 3).

<sup>5</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).

left to the State. So it is not clear how the loans guaranteed by the State under the Law are to be assessed and which risk weight should be applied to them pursuant to Part Three, Title II of the CRR (Chapters 1, 2 and 4). Owing to the alternative possibility of payment of the State guarantee through the issuance of bonds, it is not clear if the State guarantee would be considered as funded or unfunded credit protection as defined in points 58 and 59 of Article 4(1) of the CRR. Articles 194 and 215 of the CRR treat cash guarantees as unfunded credit protection, while it is different in the case of exposures secured by financial instruments such as bonds, which would be considered as funded credit protection. This is a point that is of interest to the ECB in view of the ECB's tasks concerning the prudential supervision of credit institutions in Slovenia.

Fourth, the system for granting State guarantees could have a material influence on the stability of financial institutions and markets. The ECB notes that in its letter of 2 April 2020 this issue was raised in connection with the lack of burden sharing between the State and credit institutions with regard to the deferral of borrowers' payment obligations under loans issued by credit institutions in Slovenia. The value of guarantees under the Law up to a total of EUR 2 billion could cover a significant amount of credit institutions' risk exposures and represent an appropriate mode of burden sharing between credit institutions and the State for new loans. However, this result can only be achieved if the guarantee is an instrument that is eligible for risk coverage under the CRR, since this would free up significant additional liquidity on the market.

The above comments apply similarly in the case where, prior to the default of a borrower and activation of the State guarantee, SID Bank accepts the offer of a bank to buy the loan guaranteed by the State and uses the bond issued by it as means of payment to the bank.

While fully understanding the urgency of the situation, the ECB would appreciate the Ministry of Finance giving due consideration to the above observations by honouring the obligation to consult the ECB in the future, in particular with respect to any changes to the intervention measures.

Yours sincerely,

[signed]

Cc: mag B. Vasle, Governor, Banka Slovenije

Mr P. Gentiloni, Commissioner for Economy, European Commission  
Mr L. Romero Requena, Director-General Legal Service, European Commission

Encl. Guide to consultation of the ECB by national authorities regarding draft legislative provisions