



OPINION OF THE EUROPEAN CENTRAL BANK

of 17 October 2011

on changes of rules applicable to mortgage and municipal bonds

(CON/2011/81)

Introduction and legal basis

On 21 September 2011 the European Central Bank (ECB) received a request from the Slovenian Ministry of Finance for an opinion on a draft law amending the Law on mortgage and municipal bonds (hereinafter the ‘draft law’ and the ‘Law’, respectively).

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 of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions¹, as the draft law contains 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. Purposes of the draft law

The main purposes of the draft law are: (a) to facilitate issuance of mortgage and municipal bonds by banks, for instance, by extending the pool of underlying assets for municipal bonds to debt securities issued by the State or local authorities²; and (b) to ensure better protection of bonds holders’ claims, for instance, by requiring that the present value of underlying assets at all times exceeds the present value of liabilities under mortgage bonds by at least 2%³ and that the underlying assets’ reserves are created⁴. The draft law also makes several editorial changes to the Law.

¹ OJ L 189, 3.7.1998, p. 42.

² Article 2 of the draft law amending Article 5 of the Law.

³ Article 9 of the draft law amending Article 22(2) of the Law.

⁴ Article 10 of the draft law inserting new Article 22.a in the Law.

2. General observation

The ECB broadly welcomes the draft law which should achieve the intended purposes of the draft law.

3. Specific comments

The consultation duty regarding draft secondary legislation

- 3.1 Pursuant to the draft law, municipal bonds are covered by underlying assets including, *inter alia*, loans extended to legal entities not governed by public law if the State or local authority guarantees for such entities' liabilities under such loans without limitations. These guarantees must ensure irrevocable and unconditional fulfilment of the debtor's obligations on the creditor's first demand⁵. Banka Slovenije will set out more detailed conditions that must be fulfilled for such guarantees within one month from the entry into force of the draft law⁶. The consultation duty under the Treaty covers all types of legally binding provisions, including secondary legislation. Given the objectives of Decision 98/415/EC, an opinion should only be sought from the ECB on draft secondary legislation which implements primary legislation falling within the ECB's fields of competence if the subject matter is closely related to the ECB's tasks and if the impact on areas within the ECB's fields of competence is different from that resulting from the primary legislation itself⁷. If this is the case with the abovementioned Banka Slovenije's secondary legislation, it should also be submitted to the ECB for an opinion.

Application of the net present value principle

- 3.2 In accordance with Article 22(2) of the Law as amended by Article 9 of the draft law, underlying assets and liabilities arising from mortgage bonds must at all times also match under the net present value principle, whereby the present value of underlying assets must exceed the present value of liabilities arising from mortgage bonds by at least 2%. If the intention of this provision is to simply compare the present value of underlying assets with the present value of liabilities, it is not appropriate to refer to the net present value principle which is used, for instance, to compare the present value of future cash flows with the initial investment in the context of assessing the financial advantage of an investment.

Eligibility for Eurosystem credit operations

- 3.3 New Article 22.a of the Law inserted by Article 10 of the draft law provides that the issuer must at all times ensure underlying assets' reserves in the form of certain substitute underlying assets complying with the eligibility criteria of the European System of Central Banks. This provision could be improved by referring more accurately to the eligibility criteria for collateral in Eurosystem credit operations to follow the wording of Article 18.1 of the Statute of the European

⁵ Article 5(3) and (6) of the Law as amended or, respectively, introduced by Article 2 of the draft law.

⁶ Article 5(6) of the Law as introduced by Article 2 of the draft law, and Article 20 of the draft law.

⁷ Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions, p. 14.

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System of Central Banks and of the European Central Bank. Article 20 of the Law should also be brought in line.

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

Done at Frankfurt am Main, 17 October 2011.

[signed]

The President of the ECB

Jean-Claude TRICHET