



OPINION OF THE EUROPEAN CENTRAL BANK

of 28 March 2012

on the deposit-guarantee scheme

(CON/2012/22)

Introduction and legal basis

On 5 March 2012 the European Central Bank (ECB) received a request from Banka Slovenije for an opinion on the draft decision amending the Decision on the deposit-guarantee scheme (hereinafter the 'draft decision').

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 of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions¹, as the draft decision 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 decision

1.1 Slovenian deposit-guarantee scheme

The Slovenian deposit-guarantee scheme (DGS) is governed by the Law on banking², which was the subject of several ECB consultations³. Pursuant to the Law on banking, banks with their head offices in Slovenia (hereinafter the 'member banks') guarantee the repayment of deposits up to a net deposit of EUR 100 000 held with a member bank against which bankruptcy proceedings have been initiated. The DGS is funded on an ex-post basis. If bankruptcy proceedings are initiated against a member bank, Banka Slovenije activates the DGS by requesting all other member banks to contribute their share of the funds necessary to repay guaranteed deposits held with the member bank facing bankruptcy. If they are unable to provide sufficient funds in good time, the State, upon Banka Slovenije's proposal, temporarily provides funds. Banka Slovenije forwards the funds to the designated successor bank charged with the repayment of guaranteed deposits. The member banks are repaid from the bankruptcy estate in proportion to their respective funds paid in.

¹ OJ L 189, 3.7.1998, p. 42.

² *Zakon o bančništvu* (Official Gazette of the Republic of Slovenia Nos 99/10 – official consolidated version, 9/11, 35/11, 59/11, 85/11).

³ See Opinions CON/2010/46, CON/2011/70 and CON/2006/48. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

1.2 *Draft decision*

The DGS rules contained in the Law on banking are set out in more detail in the Banka Slovenije Decision on the deposit-guarantee scheme⁴. As stated in the explanatory memorandum, the draft decision is intended to improve preparedness in the guaranteed deposits repayment process, particularly in view of the shorter repayment period. To this end, the draft decision inserts: (a) a new Article 10.a which further defines successor bank tasks and responsibilities; and (b) a new Article 10.b which introduces the notion of potential successor banks, i.e. member banks appointed by Banka Slovenije to be prepared in advance to carry out specific tasks related to the repayment of guaranteed deposits.

2. **General observations**

2.1 *Operation and financing of the DGS*

The ECB welcomes that the draft decision is aimed at, *inter alia*, ensuring a more efficient process for repayment of guaranteed deposits and at preparing for a shorter repayment period. In this context, the proposed recast of Directive 94/19/EC⁵ (hereinafter the ‘proposed Directive’), currently at an advanced stage in the legislative process, reduces the repayment period from twenty to seven days, implying the need for further adjustments upon the adoption of the proposed Directive. Moreover, the proposed Directive introduces funding arrangements for DGSs consisting of ex ante contributions provided by the member credit institutions, partly on a risk-weighted basis⁶. This implies the need for the introduction of such an ex ante funding arrangement for the DGS following adoption of the proposed Directive.

2.2 *The role of Banka Slovenije*

The ECB supports Banka Slovenije’s monitoring role in relation to the repayment of guaranteed deposits, in particular as regards a successor bank’s preparedness to carry out this task. Since DGSs are a key element of the financial safety net, overseeing their operation falls within the scope of the central bank task of contributing to financial stability⁷.

3. **Reimbursement of costs incurred by potential successor banks**

3.1 According to the new Article 10.b, each potential successor bank shall ensure that it is prepared to discharge its successor bank duties. In turn, it is entitled to reimbursement of actual costs related to its staffing, organisational preparedness and technical capability. Banka Slovenije, on behalf of the member banks, reimburses such costs to potential successor banks within 15 days from the

⁴ *Sklep o sistemu jamstva za vloge* (Official Gazette of the Republic of Slovenia No 97/10).

⁵ See the Proposal for a Directive of the European Parliament and of the Council on deposit guarantee schemes (recast) (COM(2010) 368 final).

⁶ See Article 9 of the proposed Directive.

⁷ See paragraph 3.3 of Opinion CON/2007/26.

confirmation of the cost calculation. The member banks reimburse this amount to Banka Slovenije in equal shares within 15 days from the payment to the potential successor bank.

- 3.2 The ECB understands that actual costs incurred by a potential successor bank are costs connected to the operation of the Slovenian DGS. The draft decision therefore implies that Banka Slovenije will finance, until it is reimbursed, the costs of operating the DGS and will make advance payments in this context. Such advance payments are incompatible with the monetary financing prohibition laid down in Article 123 of the Treaty. This provision prohibits central banks from providing overdraft facilities or any other type of credit facility to the public sector, including any financing of the public sector's obligations vis-à-vis third parties⁸. Hence, advance payments by national central banks in the context of the operation of the DGS are incompatible with the monetary financing prohibition⁹. The only compatible forms of central bank financing of DGSs are: (a) intraday credit in line with the general rules on provision of such credit by the central bank; and (b) short-term emergency liquidity financing under strict conditions established in the ECB's convergence reports, i.e. if such funding is short term, to address urgent situations, systemic stability aspects are at stake and decisions are at the national central bank's discretion¹⁰. These conditions need to be listed in national law¹¹ in cases where emergency liquidity financing of the DGS is provided for by the national legal system.
- 3.3 To ensure compliance with the monetary financing prohibition, any reliance on central bank funding needs to be avoided. This implies that other funding sources should be found for the financing of the reimbursed costs to a potential successor bank and that the arrangement provided for under the draft decision needs to be modified in this respect.

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

Done at Frankfurt am Main, 28 March 2012.

[signed]

The President of the ECB

Mario DRAGHI

⁸ See Article 1(b)(ii) of Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104(b)(1) of the Treaty (OJ L 332, 31.12.1993, p. 1).

⁹ See e.g. Opinion CON/2011/76.

¹⁰ See the ECB's Convergence Report, May 2010, p. 25.

¹¹ See paragraphs 2.2 to 2.8 of Opinion CON/2008/5.