



OPINION OF THE EUROPEAN CENTRAL BANK

of 26 November 2012

on a tax on financial services and on a tax on the total value of a bank's balance sheet

(CON/2012/93)

Introduction and legal basis

On 8 November 2012, the European Central Bank (ECB) received a request from the Slovenian Ministry of Finance for an opinion on a draft law on a tax on financial services and a draft law amending the Law on the total value of a bank's balance sheet (hereinafter jointly referred to as the 'draft laws').

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, for the draft law on a tax on financial services, the third and sixth indents and, for the draft law amending the Law on the total value of a bank's balance sheet, 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 both draft laws contain rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets and the second one in addition relates to Banka Slovenije. 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 laws

The draft laws are part of the legislative package on the 2013 budget.

1.1 *Draft law on a tax on financial services*

The draft law introduces an obligation to pay a tax on certain financial services. The tax is to be paid by all entities performing the financial services concerned within the territory of Slovenia. The tax base is the fee received by the entities subject to the tax in relation to the financial services provided. The tax rate is 6.5 % of the tax base. The tax period is one calendar month. Certain services will be exempt from the tax, for example services subject to VAT or the insurance operations tax, services provided by certain entities including Banka Slovenije, the ECB, the European Financial Stability Facility, European Union bodies, and services related to financial assistance. The Slovenian tax authority will be charged with supervising compliance with the draft law. Revenues arising from the tax will go to the general budget.

¹ OJ L 189, 3.7.1998, p. 42.

1.2 *Draft law amending the Law on the total value of a bank's balance sheet*

The law being amended introduced a tax to be paid annually by banks authorised to provide banking services in Slovenia. The tax base is a given bank's balance sheet total, and the tax rate is 0.1 %. The tax can be reduced by 0.167 % of the amount of loans granted by the bank to non-financial institutions and sole traders. Revenues arising from the tax will go to the general budget. The ECB was consulted on the law now being amended and adopted an opinion thereon².

The draft law introduces the following changes: (a) it limits the period of application of the law being amended, whereby the tax will be calculated and paid for assessment periods up to and including the 31 December 2014; (b) the amount by which the tax can be reduced is lowered to 0.1 %; and (c) it introduces an obligation to pay the tax in advance on the basis of the tax calculation for the preceding tax period, instead of paying the tax annually in arrears.

2. Comments on the draft law on a tax on financial services

2.1 *Definition of financial services subject to taxation*

Article 3 of the draft law contains an exhaustive list of financial services in respect of which the tax is to be paid under the draft law on a tax on financial services. Certain categories of financial services would benefit from further clarification so that the scope of the draft law is clearly defined. In particular, such clarification may be useful in relation to transactions covered by item (d), which refers to 'transactions, including brokerage, concerning currency, legal tender banknotes and coins'.

2.2 *Exemption of services performed by Banka Slovenije from taxation under the draft law*

Under Article 8 of the draft law, financial services performed by Banka Slovenije shall be exempt from taxation when Banka Slovenije is acting within its exclusive competences pursuant to the Law on Banka Slovenije or other laws and regulations of the Union laying down exclusive competences of central banks or the competences of Banka Slovenije in its capacity as an integral part of the European System of Central Banks.

The ECB understands that this provision covers transactions of Banka Slovenije within its own fund management operations.

The ECB notes that the tax on financial services may resemble a financial transaction tax if the taxable fee is proportionate to the underlying transaction. In this regard, the ECB advises the Slovenian authorities to ensure that this tax would not interfere to a significant extent with the functioning of the monetary policy transmission mechanism through secondary trading in central bank instruments.

² Opinion CON/2011/31. All ECB Opinions are available on the ECB's website at www.ecb.europa.eu.

2.3 *Implications of the draft law for financial stability*

The ECB has taken into consideration the intention of the Slovenian Government to ensure that sufficient funds are available to the economy in times of financial crisis. However, in the ECB's opinion, a comprehensive impact assessment of the proposed measure is recommended to avoid any unintended impact on financial stability given that the tax on financial services will increase the tax burden on banks and may result in an increase in the prices of financial services.

3. Comments on the draft law amending the Law on the total value of a bank's balance sheet

The ECB notes that the draft law contains a provision limiting the time in which the tax is to be paid to tax periods ending on or before 31 December 2014. The concerns expressed in the ECB's Opinion CON/2011/31 are also valid in respect of the draft law.

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

Done at Frankfurt am Main, 26 November 2012.

[signed]

The President of the ECB

Mario DRAGHI