EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 26 October 2005

at the request of Lietuvos bankas
on a draft law amending Article 125 of the Constitution of the Republic of Lithuania

(CON/2005/38)

1. On 30 September 2005 the European Central Bank (ECB) received a request from Lietuvos bankas for an opinion on a draft law amending Article 125 of the Constitution of the Republic of Lithuania (hereinafter the 'draft law').

2. The ECB's competence to deliver an opinion is based on the first and third 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 provisions[1], as the draft law relates to currency matters and Lietuvos bankas. 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.

3. Article 125(2) of the Constitution of the Republic of Lithuania currently provides that 'the right of issue of currency shall belong exclusively to Lietuvos bankas'. The draft law amends this article so that it reads 'the right of issue of currency shall belong to Lietuvos bankas'. The word 'exclusively' is therefore deleted. The ECB notes, however, that further changes to Article 125(2) are necessary in order to ensure, upon adoption of the euro by Lithuania, that the Constitution is compatible with the Treaty establishing the European Community and the Statute of the European System of Central Banks and of the European Central Bank. It is recalled that the ECB's Convergence Report 2004 stated that all national legislation referring to Lithuania's national currency must be brought in line with the Treaty and the Statute.

   In this context, the ECB raises two major concerns. First, the competence to issue euro banknotes derives from Article 106(1) of the Treaty and Article 16 of the Statute which provide that the ECB and the national central banks of the Member States which have adopted the euro (hereinafter the 'participating Member States') may issue banknotes which are the only banknotes to have legal tender status within the participating Member States. It is therefore Community law that foresees a plurality of issuers of euro banknotes, including Lietuvos bankas when the euro is eventually introduced in Lithuania. The draft law fails to recognise that the power to issue euro banknotes is based on Community not national law, and that it foresees a plurality of issuers.

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1 OJ L 189, 3.7.1998, p. 42.

Second, Article 106(1) of the Treaty and Article 16 of the Statute provide that the ECB's Governing Council has the exclusive right to authorise the issue of banknotes within the Community, and, under Article 106(2) of the Treaty, it also has the right to approve the volume of the issue of euro coins by Member States. The issuance of euro banknotes and coins is therefore subject to the conditions listed in the Treaty and the Statute. National legislation must recognise that the Governing Council has such rights; the current wording of the draft law does not do so.

In order to address these concerns and to eliminate incompatibilities, the ECB suggests inserting in the draft law references to the Treaty and the Statute. In particular, the draft law should state that Lietuvos bankas 'shall have the right, in accordance with the Treaty establishing the European Community, to issue banknotes'. To the extent that Lietuvos bankas is also entrusted to issue coins, the draft law should provide that Lietuvos bankas 'shall have the right, subject to the Treaty establishing the European Community, to issue coins'.

4. The draft law is silent as to its date of entry into force. The ECB notes that any provisions thereof recognising that the power to issue euro banknotes and coins is based on Community law and that the ECB has the right to authorise the issue of banknotes and to approve the volume of issuance of coins should take effect as of the date on which Lithuania's derogation is abrogated.

5. The ECB notes that the draft law does not address another issue concerning the compatibility of the Constitution with the Treaty and the Statute. This concerns the personal independence of the Chair of Lietuvos bankas' Board. Such independence is ensured by Article 14.2 of the Statute which states, *inter alia*, that a 'Governor may be relieved from office only if he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct'.

6. The ECB notes that, in accordance with Article 75 of the Constitution, the Parliament may remove officials[2] appointed or chosen by it[3] by a majority vote of all members of no confidence in the officials in question. In addition, Article 84(13) provides that the President of the Republic may recommend that the Parliament express no confidence in the Chair of Lietuvos bankas' Board. The Constitutional Court of the Republic of Lithuania holds the view that 'the expression of no confidence is the ground for dismissal of an official appointed or elected by the Parliament'[4].

7. The ECB considers that as Articles 75 and 84(13) of the Constitution add a new ground for dismissal, the vote of no confidence, they do not comply with Article 14.2 of the Statute. The ECB (and, previously, the European Monetary Institute) has repeatedly affirmed that national law cannot provide for any other grounds than the ones foreseen by Article 14.2 of the Statute for dismissal of

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2 Article 126(2) of the Constitution states that the Chair of Lietuvos bankas' Board is appointed by the Parliament on the recommendation of the President of the Republic.

3 With the exception of the persons specified in Article 74 of the Constitution. Article 74 of the Constitution concerns the impeachment procedure, which does not apply to the Chair of Lietuvos bankas' Board.

4 Ruling of the Constitutional Court of the Republic of Lithuania of 24 January 2003 (*Valstybės žinios*, 2003, No 10-366).

governors[5]. In particular, in the Convergence Report 2004 the ECB observed that 'under Articles 75 and 84(13) of the Constitution, Lithuania's Parliament … may remove officials appointed or chosen by the Parliament, including the Chair of Lietuvos bankas' Board, by a majority vote by all members of no confidence in the officials in question. The ground for dismissal, the vote of no confidence, does not comply with Article 14.2 of the Statute, and therefore must be adapted accordingly'[6].

8. Taking into account that the procedure for the dismissal of the Chair of Lietuvos bankas' Board is set out in Articles 10(4) and 12(2) and (3) of the Lietuvos bankas Act and that these provisions refer to the grounds for dismissal listed in Article 12(1) thereof[7], the incompatibilities of Articles 75 and 84(13) of the Constitution with the Treaty and the Statute should be removed by excluding the Chair of Lietuvos bankas' Board from the scope of application of Articles 75 and 84(13) of the Constitution.

9. The compliance of Lithuanian law with the Treaty and the Statute will be assessed in accordance with the procedure laid down in Article 122(2) of the Treaty.

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

Done at Frankfurt am Main, 26 October 2005.

[signed]

The President of the ECB

Jean-Claude TRICHET

5 See, for example, European Monetary Institute, Progress Towards Convergence 1996, p. 101; European Monetary Institute, Convergence Report: Report required by Article 109j of the Treaty establishing the European Community (1998), pp. 12, 294; European Central Bank, Convergence Report 2004, p. 27.

6 P. 225.

7 Article 12(1) of the Lietuvos bankas Act provides, *inter alia*, that the Chair of Lietuvos bankas' Board is dismissed prior to the expiration of his/her term of office only if he/she does not fulfil the conditions required for the performance of his/her duties or he/she has been found guilty of serious misconduct.