EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 15 May 2014

on oversight of payment and securities settlement systems

(CON/2014/33)

Introduction and legal basis

On 7 April 2014, the European Central Bank (ECB) received a request from Lietuvos bankas for an opinion on a draft resolution on the framework for the conduct of payment and securities settlement systems oversight (hereinafter the 'draft resolution').

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 fifth indents of Article 2(1) of Council Decision 98/415/EC[1], as the draft resolution relates to Lietuvos bankas and payment and settlement systems. 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 resolution

1.1 The draft resolution recasts the framework for the conduct of payment and securities settlement systems oversight by Lietuvos bankas, which was approved by the Board of Lietuvos bankas in 2003.

1.2 The draft resolution aims to implement the Principles for financial market infrastructures[2] (hereinafter the 'CPSS-IOSCO principles') and provide the basis for effective oversight of payment and securities settlement systems conducted by Lietuvos bankas. The draft resolution sets out the tasks that Lietuvos bankas carries out in performing systems oversight, namely: (1) registration of systems; (2) assessment of systemically important payment and securities settlement systems, performed on the basis of CPSS-IOSCO principles[3]; and (3) monitoring of systems. The draft resolution also contains provisions as regards cross-border cooperation in the field of systems oversight.

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1 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).

2 The Principles for financial market infrastructures issued jointly by the Committee on Payment and Settlement Systems (CPSS) of the Bank for International Settlements (BIS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO) (http://www.bis.org/publ/cpss101a.pdf).

3 The Principles for financial market infrastructures: disclosure framework and assessment methodology.

2. General observations

2.1 The ECB understands that the draft resolution aims to mirror the core principles for systemically important payment systems included within the CPSS-IOSCO principles. Currently, the Eurosystem is in the process of drafting an ECB regulation on oversight requirements for systemically important payment systems[4] (hereinafter the 'SIPS Regulation'). The SIPS Regulation aims to implement the CPSS-IOSCO principles in the euro area in a legally binding way. It will define inter alia the criteria for qualifying a payment system as systemically important and will set requirements aimed at ensuring efficient management of legal, credit, liquidity, operational, general business, custody, investment and other risks. It will also set requirements for sound governance arrangements, objective and open access and the efficiency and effectiveness of systemically important payment systems.

2.2 Once adopted, the SIPS Regulation will be directly applicable in the euro area. Lithuania is a Member State with a derogation pursuant to Article 139 of the Treaty. Once Lithuania adopts the euro and Lietuvos bankas becomes a fully integrated member of the Eurosystem, the SIPS Regulation will also apply to Lietuvos bankas and amendments to the draft resolution will be required.

3. Definition of systemic risk

The draft resolution defines systemic risk as 'the probability that a failure of one or more system participants to meet its obligations and/or a disruption in the system itself will cause the inability of other system participants to meet their obligations, affect other systems and/or the financial market'[5]. This definition is constructed cumulatively and therefore is narrower than that included in the CPSS-IOSCO principles[6], since, under the draft resolution, for a risk to be considered systemic, the failure of a system participant to meet its obligations should not only cause other participants to be unable to meet their obligations, but also 'affect other systems and/or the financial market'. In order to ensure consistency with the SIPS Regulation and the CPSS-IOSCO principles and a harmonised concept of systemic risk throughout the euro area, the draft resolution will need to be amended in this regard once the SIPS Regulation becomes applicable to Lietuvos bankas.

4. Assessment of systems

4.1 The draft resolution provides that the assessment of systems should be the assessment of 'systems operation for its compliance with the CPSS-IOSCO principles'[7]. The ECB notes that payment and

4 Press release of the ECB of 7 June 2013, announcing public consultation on a draft SIPS Regulation, available on the ECB's website at www.ecb.europa.eu.

5 Paragraph 2.3 of the draft resolution.

6 Systemic risk is defined in Annex H of the CPSS-IOSCO principles as 'the risk that the inability of one or more participants to perform as expected will cause other participants to be unable to meet their obligations when due'.

7 Paragraph 7 of the draft resolution.

settlement systems themselves, and not only systems operation, should be assessed against the CPSS-IOSCO principles, and recommends amending the draft resolution accordingly.

4.2 The ECB understands that Lietuvos bankas is also the competent authority to oversee central counterparties and systems operated by the central counterparties and recommends clarifying the draft resolution accordingly.

4.3 The draft resolution provides for the systems assessment to be performed every three years or when substantial changes to a system are made[8]. The ECB notes that the SIPS Regulation will provide for a higher frequency of assessment[9]. The draft resolution will need to be amended in this regard once the SIPS Regulation becomes applicable to Lietuvos bankas.

5. Collection and sharing of information

5.1 The draft resolution entitles Lietuvos bankas to determine the information 'necessary for the conduct of systems monitoring' and the frequency of such reporting[10]. The ECB suggests that the draft resolution is amended to ensure that the data collected may be used for tasks of the European System of Central Banks (ESCB) other than systems monitoring.

5.2 In the same vein, as regards ensuring confidentiality of the information 'necessary for the conduct of systems oversight' and the sharing of such information with the ECB and/or foreign competent authorities[11], the draft resolution should be amended, by analogy with the harmonised conditions provided for in Guideline ECB/2012/27[12], to ensure that the information may also be shared with other central banks of the ESCB, to the extent that this is necessary for the efficient functioning of payment and securities settlement systems, or with supervisory and oversight authorities of Member States and the Union, to the extent that this is necessary for the performance of their public tasks.

8 Paragraph 10 of the draft resolution.

9 Every one to two years.

10 See paragraphs 14, 15 and 16.3 of the draft resolution.

11 Paragraph 24 of the draft resolution.

12 Article 38(2) of Annex II to Guideline ECB/2012/27 of 5 December 2012 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2) (OJ L 30, 30.1.2013, p. 1).

6. Organisational separation of operator and oversight functions

The ECB welcomes the fact that the draft resolution[13] provides for organisational separation between the functions of Lietuvos bankas as payment systems operator and in the oversight of systems.

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

Done at Frankfurt am Main, 15 May 2014.

[signed]

The President of the ECB

Mario DRAGHI

13 Paragraph 23 of the draft resolution.