OPINION OF THE EUROPEAN CENTRAL BANK

of 6 February 2015

on a new legal framework for the production of official statistics in Lithuania

(CON/2015/5)

Introduction and legal basis

On 27 November 2014, the European Central Bank (ECB) received a request from the Lithuanian Ministry of Finance for an opinion on a draft law amending the Law on statistics (hereinafter the 'draft law') and a draft law amending the Code on administrative breaches of the law (hereinafter together 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 the third and fourth indents of Article 2(1) of Council Decision 98/415/EC[1], as the draft laws relate to Lietuvos bankas and the collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payments statistics. 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

1.1 The aim of the draft laws is to improve the general functioning of official statistics production and ensure consistency with updated Union legislation in the field of statistics[2]. The draft laws explicitly recognise the role of Lietuvos bankas in the area of official statistics and define its rights and obligations in this regard, including empowering it to impose sanctions for non-compliance with statistical reporting obligations.

1.2 The draft law defines the principles underlying the official statistics, the organisation of official statistics, the powers of and relationship between Lietuvos bankas and Lietuvos statistikos departamentas (the National Statistical Institute of Lithuania, hereinafter 'Statistics Lithuania'), the rights and obligations of statistical data users, and the use and protection of statistical data, including confidential data.

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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 Including Regulation (EC) No 177/2008 of the European Parliament and of the Council of 20 February 2008 establishing a common framework for business registers for statistical purposes (OJ L 61, 5.3.2008, p. 6), Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank (OJ L 318, 27.11.1998, p. 8) and Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics (OJ L 87, 31.3.2009, p. 164).

2. General observations

The ECB welcomes the draft laws, which aim to ensure consistency with the framework of European statistics and to improve the production of official statistics in Lithuania. The ECB welcomes in particular the provisions of the draft laws recognising two separate but complementary legal frameworks under which official statistics are developed, produced and disseminated, namely by Statistics Lithuania, operating within the partnership of the European Statistical System (ESS), and by Lietuvos bankas, as a member of the European System of Central Banks (ESCB).

3. Statistical principles

3.1 The statistical principles governing the production of European statistics by the ESCB under Regulation (EC) No 2533/98 are similar but not identical to the statistical principles governing the production of European statistics by the ESS under Regulation (EC) No 223/2009. The ECB welcomes the recognition of two sets of principles in the draft law, one applying to Statistics Lithuania[3] and the other applying to Lietuvos bankas[4].

3.2 However, the ECB considers the condition 'unless Union legislation provides otherwise'[5] superfluous since the complementary statistical regimes and the corresponding two sets of principles stem from Union legislation: Regulations (EC) No 2533/98 and (EC) No 223/2009 respectively. For legal certainty reasons, Article 3 of the draft law should make it explicit that the statistical principles contained in Regulation (EC) No 223/2009 govern the production of official statistics by Statistics Lithuania and other bodies managing official statistics, while Lietuvos bankas, in its capacity as member of the ESCB, should apply the statistical principles contained in Regulation (EC) No 2533/98.

4. Lietuvos bankas' independence

4.1 The ECB broadly welcomes the fact that the draft laws recognise and preserve the independence of Lietuvos bankas as a body concerned with and producing official statistics in its areas of competence.

4.2 However, the ECB recommends introducing certain drafting clarifications in the draft law to ensure Lietuvos bankas' independence. More particularly, the draft law[6] should make clear that the cooperation between Lietuvos bankas and Statistics Lithuania must be without prejudice to Lietuvos bankas' independence and to its tasks within the statistical framework of the ESCB[7].

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3 Article 3(1) of the draft law.

4 Article 3(3) of the draft law.

5 Article 3(3) of the draft law.

6 For example, Article 4(3) of the draft law.

7 See also paragraph 2.3 of Opinion CON/2010/2, paragraph 2 of Opinion CON/2010/24, and Opinion CON/2012/84. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

4.3 Furthermore, as regards the administrative liability of officials, civil servants and the staff of official statistics bodies for non-compliance with the draft law, including as regards the treatment of confidential data[8], the draft law amending the Code on administrative breaches of the law[9] should be amended: it should ensure that, prior to submission to the court, administrative cases against Lietuvos bankas' staff regarding unlawful use of statistical data and disclosure of confidential statistical data, if any, should be investigated by Lietuvos bankas, and not by Statistics Lithuania.

5. Cooperation between Lietuvos bankas and Statistics Lithuania

5.1 The ECB emphasises that ensuring effective cooperation between Lietuvos bankas and Statistics Lithuania is very important to minimise the reporting burden on respondents and to guarantee the coherence and consistency of all official statistics. It welcomes the general clause in the draft law[10] referring to such cooperation in preparing and implementing the official statistics programme. The ECB recommends introducing drafting clarifications explicitly confirming the duty to cooperate in other provisions of the draft law, for example as regards the exchange of statistical data[11]. The ECB recommends clarifying in Articles 4 and 6 that data produced by Lietuvos bankas may be used directly or indirectly by Statistics Lithuania and by other bodies managing official statistics for the production of European statistics and, equally, that statistics produced by Statistics Lithuania and the other bodies managing official statistics may be used directly or indirectly by Lietuvos bankas[12].

5.2 In the same vein, for legal certainty reasons the ECB recommends introducing drafting clarifications to spell out explicitly Lietuvos bankas' performance of its statistical tasks within the statistical framework of the ESCB, and strengthen the overarching principle of the development, production and dissemination of the official statistics under two separate but complementary legal frameworks. In particular, the statistics that are necessary to undertake the tasks of the ESCB should be explicitly included in the definition of 'European statistics'[13]. In addition to the definition of the 'European statistical programme', a corresponding definition of the 'statistical work programme of the ESCB' should be introduced. Lietuvos bankas' place in the organisation of official statistics should be further clarified[14]: although it is an official statistics body, Lietuvos bankas does not belong to the ESS and develops, produces and disseminates European statistics in its capacity as member of the ESCB. Finally, it should be clarified that Statistics Lithuania prepares the official Lithuanian statistics programme together with Lietuvos bankas[15], and that the report on the implementation of such statistics programme to be approved by the Lithuanian government should

8 Article 20 of the draft law and Article 3 of the draft law amending the Code on administrative breaches of the law.
9 Article 7 of the draft law amending the Code on administrative breaches of the law (amendment to Article 259^1 of the Code on administrative breaches of the law).
10 Article 4(3) of the draft law.
11 Article 13(1) of the draft law.
12 Article 6(6)(1) of the draft law.
13 Article 2(2) of the draft law.
14 Article 4 of the draft law.
15 Article 6(5)(1) of the draft law.

not include information on the statistical activities of Lietuvos bankas[16] as these are presented in the latter's annual report.

6. Sharing of confidential statistical data

6.1 The draft law includes provisions regarding the sharing of statistical data and information with Eurostat, the ECB, and national central banks and national statistical institutes of Union Member States[17]. It also allows the transmission of confidential statistical data to scientific research bodies[18]. In order to ensure the efficient collection, compilation and dissemination of European statistics, the ECB recommends clarifying that Article 13 of the draft law allows the exchange of confidential statistical information data with Eurostat, all authorities belonging to the ESS and the ESCB[19].

6.2 The ECB also recommends, in line with its Recommendation ECB/2014/13[20], explicitly allowing Lietuvos bankas to transfer confidential statistical information to Union and national authorities responsible for the supervision of financial institutions, markets and infrastructures and macro-prudential oversight, in accordance with the procedure laid down in Union legislation, in particular Regulation (EC) No 2533/98.

6.3 As regards the treatment of confidential statistical information, the ECB recommends specifying in the draft law[21] that Lietuvos bankas is bound by the provisions laid down in Regulation (EC) No 2533/98.

7. Sanctioning powers

7.1 The draft laws, which aim to ensure the proper application of Regulation (EC) No 2533/98[22], provide for the sanctioning powers of Lietuvos bankas and Statistics Lithuania in relation to third parties that fail to comply with their statistical obligations. However, the draft law does not mention the ECB's powers to impose sanctions for non-compliance with the ECB's statistical reporting requirements[23]. The ECB recommends addressing this issue in the draft law.

16 Article 6(5)(2) of the draft law, which should be brought in line with Articles 9(2) and (3) of the draft law.
17 Articles 13(2) and (3) of the draft law.
18 Article 13(4) of the draft law.
19 Also see Opinion CON/2010/2, paragraph 4.
20 Recommendation ECB/2014/13 of the European Central Bank of 21 March 2014 for a Council Regulation amending Regulation (EC) No 2533/98 concerning the collection of statistical information by the European Central Bank (OJ C 188, 20.6.2014, p. 1).
21 Article 14 of the draft law.
22 Annexes to the draft laws.
23 Article 7 of Regulation (EC) No 2533/98.

7.2 The ECB also recommends aligning the sanctioning powers of Lietuvos bankas laid down in the draft laws[24] and in the Law on Lietuvos bankas: according to the Law on Lietuvos bankas[25], it is for Lietuvos bankas to determine the size of sanctions and arrangements for their application to legal entities.

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

Done at Frankfurt am Main, 6 February 2015.

[signed]

The President of the ECB

Mario DRAGHI

24 Article 2 of the draft law amending the Code on administrative breaches of the law.

25 Article 54^1 of the Law on Lietuvos bankas.