EUROPEAN CENTRAL BANK

EUROSYSTEM

EN **ECB-PUBLIC**

OPINION OF THE EUROPEAN CENTRAL BANK

of 30 March 2020

on the provision of emergency liquidity assistance by Lietuvos bankas

(CON/2020/11)

Introduction and legal basis

On 26 March 2020 the European Central Bank (ECB) received a request from Lietuvos bankas for an opinion on a draft law initiated by Lietuvos bankas to amend the Law on the Lietuvos bankas[1] (hereinafter the 'draft law').

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[2], as the draft law relates to Lietuvos bankas and 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 law

1.1 The purpose of the draft law is to enable Lietuvos bankas to extend emergency liquidity assistance (ELA) beyond only credit institutions to a broader range of financial institutions experiencing temporary liquidity problems. As noted in the explanatory memorandum accompanying the draft law, access for a wider range of financial market participants to ELA will contribute to the business continuity of those institutions when they are solvent but face temporary liquidity problems and are unable to borrow from the market due to a disruption in financial markets. This will contribute to the overall maintenance of financial stability in Lithuania.

1.2 The draft law expands the range of institutions to which Lietuvos bankas may grant loans secured by adequate collateral, in accordance with the terms and conditions established by Lietuvos bankas, to include financial institutions and insurance and reinsurance undertakings. As clarified in the explanatory memorandum, this means that under the draft law Lietuvos bankas may grant loans to not only credit institutions but also to payment institutions, electronic money institutions, and companies providing securities, insurance, leasing and other financial services.

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1 1994 *m. gruodžio* 1 *d. Lietuvos Respublikos Lietuvos banko įstatymas Nr.* I-678, *Valstybės žinios*, 1994, *Nr*. 99-1957, 2001, *Nr*. 28-890 (*su vėlesniais pakeitimais ir papildymais*).

2 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).

1.3 The draft law retains the existing requirement that Lietuvos bankas may grant such loans without prejudice to the requirements derived from Lietuvos bankas' participation in the European System of Central Banks (ESCB), and notably those resulting from operations on behalf of public entities.

1.4 As noted in the explanatory memorandum, the draft law is particularly relevant to the current situation in which quarantine has been enforced in Lithuania, which may cause the financial situation of financial market participants and other persons dependent on their activities to deteriorate. The explanatory memorandum also notes that the right of a central bank to grant loans to a broader range of financial institutions other than credit institutions is provided for in the central bank laws of other Member States, including Belgium, Germany, Greece, Ireland, Latvia and Slovenia.

2. Observations

2.1 The provision of ELA refers to the provision by a Eurosystem national central bank (NCB) of central bank money and/or any assistance that may lead to an increase in the provision of central bank money to a solvent financial institution or a group of solvent financial institutions that faces temporary liquidity problems, where this operation is not part of the single monetary policy[3].

2.2 The ECB welcomes that the draft law confirms that ELA should be provided by Lietuvos bankas without prejudice to the requirements derived from Lietuvos bankas' participation in the ESCB, thus providing a safeguard to ensure compliance with the requirements relating to the provision of ELA by NCBs in the ESCB pursuant to the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB')[4].

2.3 The ECB notes the possibility under the draft law for Lietuvos bankas to provide ELA to non-bank financial institutions in Lithuania experiencing liquidity problems. The inclusion of financial institutions in the list of potential ELA recipients is consistent with the Eurosystem Agreement on emergency liquidity, which explicitly refers to the possible provision of ELA by an NCB to a financial institution or a group of financial institutions facing liquidity problems[5]. The flexibility of the provision of ELA by Lietuvos bankas introduced by the draft law is of particular relevance in the context of the ongoing COVID-19 pandemic.

2.4 The responsibility for the provision of ELA lies with the NCB concerned. This means that any costs and risks arising from the provision of ELA are incurred by the relevant NCB. However, pursuant to Article 14.4 of the Statute of the ESCB, the Governing Council of the ECB may restrict ELA operations if it finds that these interfere with the objectives and tasks of the ESCB. The Governing Council must be informed of such operations in a timely manner in order for it to adequately assess such interference. A procedure to this end has been in place since 1999 and its key features are

3 See paragraph 1.2 of the Eurosystem Agreement on emergency liquidity assistance (17 May 2017), available on the ECB's website at www.ecb.europa.eu.

4 See paragraph 10 of Opinion CON/2005/60. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

5 See paragraph 1.2 of the Eurosystem Agreement on emergency liquidity assistance (17 May 2017).

summarised in the Eurosystem Agreement on Emergency Liquidity Assistance of 17 May 2017[6]. Strict compliance with the ELA procedures is of utmost importance.

2.5 In view of compliance with the monetary financing prohibition under Article 123 of the Treaty, it is reiterated that ELA may only be extended to illiquid but solvent credit institutions or financial institutions. The financing by an NCB of insolvent credit institutions or financial institutions would not be compatible with the monetary financing prohibition since the financing of insolvent credit institutions or financial institutions constitutes a government task[7].

2.6 With regard to financial independence, as required of an ESCB central bank under Article 130 of the Treaty, the ECB recalls that an NCB within the ESCB is required to have sufficient financial resources not only to perform its ESCB-related tasks but also its national tasks, including the provision of ELA. Member States may not put their NCBs in a position where they have insufficient financial resources and inadequate net equity to carry out their ESCB or Eurosystem-related tasks, as applicable. Losses incurred by an NCB in the exercise of its national tasks could negatively impact the exercise of ESCB-related tasks. As a consequence, the NCB may not have sufficient financial resources to perform the ESCB-related tasks required of it under the Treaty and the Statute of the ESCB. For all these reasons, financial independence under the Treaty implies that an NCB should always be sufficiently capitalised[8].

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

Done at Frankfurt am Main, 30 March 2020.

[signed]

The President of the ECB

Christine LAGARDE

6 The ECB/ Eurosystem Agreement on emergency liquidity assistance (17 May 2017).

7 See paragraph 2.1 of Opinion CON/2016/55; paragraph 5 of Opinion CON/2013/26; paragraph 4.1 of Opinion CON/2008/58 and paragraph 4.2 of Opinion CON/2008/46.

8 See ECB Convergence Report 2018, p. 25, available on the ECB's website at www.ecb.europa.eu; see also paragraph 2.5 of Opinion CON/2016/55; paragraph 2.1 of Opinion CON/2012/69 and paragraph 3.3 of Opinion CON/2014/24.