EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 29 September 2009

on the public audit of Lietuvos bankas

(CON/2009/77)

Introduction and legal basis

On 25 August 2009 the European Central Bank (ECB) received a request from the Audit Committee of the Seimas (Parliament) of Lithuania for an opinion on a draft law amending Article 14 of the Law on the State Audit Office[1] (hereinafter the 'draft law').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the third 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 provisions[2], as the draft law relates to 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.

1. Purpose of the draft law

1.1 The main purpose of the draft law is to amend the Law on the State Audit Office in order to make the legal provisions more detailed and certain and to explicitly enable the State Audit Office to conduct the public audit of Lietuvos bankas, i.e. to audit the performance of the activities provided for in the Law on Lietuvos bankas, as far as this does not conflict with the legal acts of the European Union and the objectives and tasks of the European System of Central Banks (ESCB) established therein.

1.2 In the Law on the State Audit Office as it currently stands, Lietuvos bankas is not specifically mentioned as an institution that is subject to public audit. According to the consulting authority, the legal basis for carrying out a public audit of Lietuvos bankas is currently derived only from a systemic analysis of the legal norms governing the authority of the State Audit Office, the institutions subject to public audit and the scope of public audits. In this regard, the proposed amendments to the Law on the State Audit Office will provide an explicit legal basis for the State Audit Office to perform such public audits of Lietuvos bankas.

1 *Valstybės žinios*, 1995, No 51-1243.

2 OJ L 189, 3.7.1998, p. 42.

2. General observations

2.1 The last time the State Audit Office audited Lietuvos bankas was in 2004[3]. This audit mostly covered the period from 2002 to 2003, prior to Lithuania's entry into the EU. Since 1994 the financial accounts of Lietuvos bankas have been audited by an independent external auditor. Currently, the independent external auditor of Lietuvos bankas is UAB Ernst & Young Baltic.

2.2 With regard to the authority to carry out state audits, while the ECB and several national central banks (NCBs) are subject to other statutory audits and controls, in addition to audits by independent external auditors (such as those appointed for Eurosystem NCBs under Article 27.1 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB')), the scope of such audits is subject to certain limits. In the Convergence Report of May 2008[4] the ECB noted that, where NCB operations are made subject to the control of a state audit office or similar body charged with controlling the use of public finances, the scope of the control should be clearly defined by the legal framework and should be without prejudice to the activities of the NCB's independent external auditors, as laid down in Article 27.1 of the Statute of the ESCB. The state audit should be done on a non-political, independent and purely professional basis. The activities of the state auditors should in any event not jeopardise the NCBs' independence.

2.3 Moreover, the ECB has stressed on several occasions that, in compliance with the principle of financial independence of NCBs[5], such statutory audits and controls may in any event not imply *ex ante* third party intervention in an NCB's expenditure needed for its statutory tasks, including both ESCB and non-ESCB related tasks, and that national law should provide specific safeguards to guarantee that state auditors do not interfere with the activities of the independent external auditors in respect of the review of ESCB-related accounts and ESCB-related tasks[6] conferred by the Treaty and the Statute of the ESCB. In addition, the ECB reminds the consulting authority that the 'primacy of Community law and rules adopted thereunder also implies that national laws on access of third parties to documents [of an NCB] may not lead to infringements of the ESCB's confidentiality regime'[7].

2.4 More specifically as regards Lithuania, the ECB noted in the Convergence Report of May 2006 that, under the Law on the State Audit Office, this Office is empowered to check whether the State's property is being effectively managed. The ECB also stated that it 'understands that: (i) the State Audit Office is also bound by Article 3(2) of the Law [on Lietuvos bankas], which concerns

3 Report on the public audit: the assessment of the activities of Lietuvos bankas, 30 December 2004. Available on the State Audit Office's website at http://www.vkontrole.lt/auditas_ataskaita.php?730.

4 Convergence Report, May 2008, p. 21.

5 Opinion CON/2008/10. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

6 Opinions CON/2006/4, CON/2006/33 and CON/2006/44.

7 Convergence Report, May 2008, p. 22.

the general prohibition on giving instructions to the NCB; (ii) the audit of the State Audit Office is limited to the management, usage and disposal of real estate, equipment and capital of Lietuvos bankas; and (iii) the State Audit Office has no power to interfere with either the opinion of the external auditors or with Lietuvos bankas's ESCB-related tasks'[8]. The ECB concluded that, in view of these safeguards, the powers of the State Audit Office are not incompatible with central bank independence.

The ECB notes that these remarks remain valid.

3. Specific comments

3.1 In view of the safeguards required to ensure central bank independence and outlined in the Convergence Report of May 2006 (see paragraph 2.4 of this opinion), the current wording of the draft law should be clarified in order to ensure that such safeguards are in place.

3.2 In the same vein, the ECB understands the intention of the consulting authority to make the appropriate legal provisions more detailed and certain[9]. However, the ECB notes that the wording of the draft law itself does not entirely fulfil its purposes. For reasons of legal certainty, the wording of the draft law should therefore be adjusted in order to guarantee the safeguards mentioned above, following, for example, the concept of the 'operational efficiency of the management' in describing the mandate of the State Audit Office, as expressed in Article 27.2 of the Statute of the ESCB.

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

Done at Frankfurt am Main, 29 September 2009.

[signed]

The President of the ECB

Jean-Claude TRICHET

8 Convergence Report, May 2006, p. 74.

9 Explanatory memorandum on the draft law, paragraphs 2 and 4.