EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 26 June 2013

on Lietuvos bankas' macro-prudential mandate

(CON/2013/45)

Introduction and legal basis

On 29 May 2013 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 Lietuvos bankas (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 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 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 main aim of the draft law is to implement Recommendation ESRB/2011/3 of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities[2].

1.2 More specifically, the draft law designates Lietuvos bankas as the authority responsible for establishing, publishing and implementing macro-prudential policy, and it assigns to Lietuvos bankas a number of tasks and grants it certain powers in order to achieve its objectives in this regard. The draft law also establishes a mechanism for cooperation at national and cross-border level, and gives Lietuvos bankas the power to obtain relevant information.

1.3 The draft law also contains provisions which are not related to the implementation of Recommendation ESRB/2011/3, i.e.: (a) an amendment to Article 27(3) of the Law on Lietuvos bankas under which loans provided by Lietuvos bankas to credit institutions may be secured by entering into an agreement with the credit institution to transfer the title to financial collateral; and (b) an amendment to Article 55 of the Law on Lietuvos bankas extending the nature and frequency of the publication of statistical information.

1 OJ L 189, 3.7.1998, p. 42.

2 OJ C 41, 14.2.2012, p. 1.

1.4 The ECB was not consulted on the draft law amending the Law on Lietuvos bankas that will enter into force on the introduction of the euro in Lithuania[3]. If its provisions are similar to those of the draft law, the ECB's observations concerning the draft law as expressed in this opinion will apply by analogy to that law also. The ECB should be consulted on the draft law amending the Law on Lietuvos bankas that will enter into force on the introduction of the euro in Lithuania in the event its provisions are substantially different from the provisions of the draft law.

2. Lietuvos bankas' macro-prudential mandate

2.1 The ECB supports the design of effective macro-prudential policy frameworks within Member States, in line with the guiding principles set out in Recommendation ESRB/2011/3. Moreover, the ECB considers that the ECB and national central banks should play a leading role in macro-prudential oversight, given their expertise and existing responsibilities in the area of financial stability[4].

2.2 At the same time, performance by Lietuvos bankas of macro-prudential tasks should not affect: (a) Lietuvos bankas' functional and financial independence; or (b) the performance by the European System of Central Banks of its tasks under the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the Statute of the ESCB)[5].

2.3 The ECB understands that current provisions of the Law on Lietuvos bankas ensuring Lietuvos bankas' independence in implementing all its objectives and performing all its tasks and activities[6], – and not merely those in relation to maintaining price stability, also cover the establishment and implementation of macro-prudential policy.

2.4 In addition, the ECB understands that the draft law not only assigns a new task of Lietuvos bankas to perform macro-prudential oversight, but also establishes a new objective for Lietuvos bankas, namely to contribute to the stability of the financial system through its macro-prudential policy. In line with Article 127(1) of the Treaty and Article 2 of the Statute of the ESCB, this objective should be subordinated to the primary objective of price stability. The draft law should be adapted to reflect this.

2.5 Moreover, in line with Article 127(1) of the Treaty and Article 2 of the Statute of the ESCB, the secondary objectives of Lietuvos bankas should be subordinated to both the primary and the secondary objectives of the ESCB. This is required for the full legal integration of Lietuvos bankas

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3 Draft amendments to the Law amending Articles 1, 6, 7, 8, 11, 12, 14, 19, 20, 25, 31, 33, 35, 36, 38, 47, 49, 50, 53, 54, 54(1), 55, titles of fourth and fifth sections, repealing Articles 26, 27, 28, 29, 30, 32, 37 and supplementing the Annex to the Law on Lietuvos bankas. *Valstybės žinios*, 29-04-2006, No 48–1699. Pursuant to Article 33 of this Law, it will come into force on the date on which the Council of the European Union abrogates the derogation of Lithuania in accordance with the procedure laid down in Article 122(2) of the Treaty establishing the European Community.

4 See paragraph 2.1 of Opinion CON/2013/30. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

5 See paragraph 2.3 of Opinion CON/2013/30.

6 Article 3(2) of the Law on Lietuvos bankas.

into the Eurosystem, and therefore a legislative provision to this effect will need to enter into force on the date on which Lithuania adopts the euro[7].

2.6 The provisions of the draft law regarding compensation for the damage caused by unlawful acts of Lietuvos bankas and its staff[8] aim to implement Recommendation D4 of Recommendation ESRB/2011/3[9]. They repeat similar existing provisions of the Law on Lietuvos bankas regarding compensation for damage caused by unlawful acts related to the performance of financial market supervision[10]. However, these provisions of the draft law do not expressly address Recommendation D4, which calls for legal protection of Lietuvos bankas and its staff when acting in good faith. In this respect, such legal protection should be provided for in the draft law or, if it is already contained in other laws[11], the ECB recommends that the draft law includes a reference to such other laws.

2.7 Pursuant to the draft law, Lietuvos bankas is: (a) given the power to obtain information necessary for the implementation of macro-prudential policy[12]; (b) obliged to ensure the confidentiality of such information[13]; (c) mandated to cooperate and exchange information with the ESRB, macro-prudential authorities and financial supervisory authorities of other Member States, third countries and Union institutions[14].

The draft law precludes Lietuvos bankas from releasing such confidential information to anyone or otherwise making it available, except as specified by law[15]. The ECB understands that Lietuvos bankas' obligation to cooperate and exchange information at national and cross-border level[16] is one of such cases specified by law.

2.8 This opinion is without prejudice to the conclusions of the follow-up assessment of the abovementioned recommendation, which the ESRB will prepare in accordance with Article 17 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board[17].

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7 See ECB's Convergence Report of June 2013, p. 42.

8 New Article 47^3 of the Law on Lietuvos bankas, contained in the draft law.

9 Recommendation D4 recommends that Member States ensure legal protection for macro-prudential authorities and their staff when they act in good faith.

10 Article 45 of the Law on Lietuvos bankas.

11 For example, laws regulating civil liability matters in general, such as the Civil Code.

12 Recommendation C2 of Recommendation ESRB/2011/3, and its implementation by new Article $47^1(4)(2)$ of the Law on Lietuvos bankas, contained in the draft law.

13 Recommendation C2 of Recommendation ESRB/2011/3, and its implementation by new Article 47^2 of the Law on Lietuvos bankas, contained in the draft law.

14 Recommendation B4 of Recommendation ESRB/2011/3, and its implementation by new Article 47^4 of the Law on Lietuvos bankas, contained in the draft law.

15 New Article 47^2 of the Law on Lietuvos bankas, contained in the draft law.

16 New Article $47^4(2)$ of the Law on Lietuvos bankas, contained in the draft law.

17 OJ L 331, 15.12.2010, p. 1.

3. Collateral for loans by Lietuvos bankas to credit institutions

3.1 Article 27 of the Law on Lietuvos bankas currently permits Lietuvos bankas to provide loans denominated in litai to credit institutions established in Lithuania, which have accounts with Lietuvos bankas. Such loans are to be granted against the following types of collateral, which is to be provided by the credit institution concerned: (a) Government or Lietuvos bankas' debt securities; (b) foreign currency or precious metals; (c) promissory notes and other debt liabilities and immovable property which comply with conditions laid down by Lietuvos bankas. In addition, loans can also be secured by means of a State guarantee or the surety or guarantee of a credit institution.

3.2 The draft law provides that, in addition to the abovementioned types of collateral, loans denominated in litai granted by Lietuvos bankas to credit institutions may also be collateralised by entering into an agreement with a credit institution to transfer the title to financial collateral.

3.3 The ECB notes that, although Member States that have not adopted the euro retain competence in the field of monetary policy, it is nevertheless beneficial for them to achieve consistency with Eurosystem standards so that credit institutions in those Member States can become familiar with the Eurosystem eligibility criteria for marketable and non-marketable assets that will apply to them once the euro is introduced. The ECB understands that Article 27 of the Law on Lietuvos bankas will be repealed[18] on the date on which the Council of the European Union abrogates the derogation of Lithuania in accordance with the procedure laid down in Article 140 of the Treaty, i.e. on the introduction of the euro in Lithuania.

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

Done at Frankfurt am Main, 26 June 2013.

[signed]

The President of the ECB

Mario DRAGHI

18 Law amending Articles 1, 6, 7, 8, 11, 12, 14, 19, 20, 25, 31, 33, 35, 36, 38, 47, 49, 50, 53, 54, 54(1), 55, titles of fourth and fifth sections, repealing Articles 26, 27, 28, 29, 30, 32, 37 and supplementing the Annex to the Law on Lietuvos bankas. *Valstybės žinios*, 29-04-2006, No 48–1699. Pursuant to Article 33 of this Law, it will come into force on the date on which the Council of the European Union abrogates the derogation of Lithuania in accordance with the procedure laid down in Article 122(2) of the Treaty establishing the European Community.