EUROPEAN CENTRAL BANK

# OPINION OF THE EUROPEAN CENTRAL BANK

**of 30 December 2005**

**at the request of Lietuvos bankas**
**on a draft law amending the Lietuvos bankas Act**

**(CON/2005/60)**

1. On 9 November 2005 the European Central Bank (ECB) received a request from Lietuvos bankas for an opinion on a draft law amending the Lietuvos bankas Act (hereinafter the 'draft law').

2. The ECB's competence to deliver an opinion is based on the first, third and fifth 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 currency matters, 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.

3. The ECB understands that the main objective of the draft law is to bring the Lietuvos bankas Act into line with the Treaty establishing the European Community and the Statute of the European System of Central Banks and of the European Central Bank. In the ECB's Convergence Report 2004[2], the ECB noted that Lithuanian legislation concerning Lietuvos bankas's operations, including Lithuania's Constitution, the Lietuvos bankas Act, the Act on money and the Act on credibility of the litas, required adaptation pursuant to Article 109 of the Treaty.

4. The ECB notes that the draft law represents a comprehensive revision of the Lietuvos bankas Act. It welcomes the adaptations proposed in the draft law. Once enacted, and subject to the following comments, the draft law will contribute to the completion of the legislative adaptations required for the abrogation of Lithuania's derogation. The ECB notes that the draft law is intended to enter into force on the day on which Lithuania's derogation is abrogated pursuant to the procedure provided by Article 122(2) of the Treaty.

5. As a general remark, the ECB notes that the grounds for dismissal of the Chairperson of Lietuvos bankas's Board as laid down in Lithuania's Constitution are not compatible with Article 14.2 of the Statute. Articles 75 and 84(13) of the Constitution allow the Chairperson to be dismissed following a vote of no confidence, which is not a ground for dismissal under Article 14.2 of the Statute.

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1 OJ L 189, 3.7.1998, p. 42.

2 Convergence Report 2004, pp. 225-226.

Moreover, Article 125(2) of the Constitution, which provides that Lietuvos bankas has the exclusive right to issue currency, still requires adaptation in order to bring it into line with the Treaty and the Statute[3]. The ECB also notes that certain of Lietuvos bankas's functions and duties are provided for in other legal acts, such as the Act on money and the Act on credibility of the litas. The ECB draws Lietuvos bankas's attention to the fact that such legal acts must be brought into line with the Treaty and the Statute prior to the abrogation of Lithuania's derogation.

6. The ECB welcomes the fact that Article 1 of the draft law clarifies that Lietuvos bankas will be an integral part of the European System of Central Banks (ESCB) and that it will carry out the ESCB's tasks in accordance with the guidelines and instructions of the ECB, as required by Article 14.3 of the Statute. Article 1 of the draft law also states that the assets of Lietuvos bankas belong to Lietuvos bankas and that Lietuvos bankas manages, uses and disposes of these assets in accordance with the terms prescribed by Community law and the Lietuvos bankas Act. The ECB understands that this provision reinforces Lietuvos bankas's right to manage its resources and contributes to the achievement of the ESCB's objectives. This provision of the draft law is welcome.

7. The ECB also welcomes the provisions of Article 2 of the draft law which states that, in accordance with the requirements of the Treaty, Lietuvos bankas has the right to issue banknotes and coins.

8. The reformulated statutory objectives of Lietuvos bankas (Article 3 of the draft law) are now consistent with Article 105(1) of the Treaty and Article 2 of the Statute. However, Lietuvos bankas might consider referring to the 'general economic policies *in* the Community' instead of 'Community general economic policies', in order to reflect the wording used in the Treaty.

9. The ECB notes that Article 4 of the draft law makes a distinction between ESCB-related tasks and the other tasks of Lietuvos bankas, listing the issuance of banknotes and coins among the former. However, the issuance of coins is the prerogative of Member States and not an ESCB task.

10. Under Article 4 of the draft law Lietuvos bankas, as part of its other tasks, would be entitled to grant loans to credit institutions, secured by adequate collateral in accordance with the procedure, conditions and terms established by Lietuvos bankas. The ECB understands that Article 4 of the draft law provides for a mechanism to tackle a financial crisis if Lietuvos bankas deems emergency liquidity assistance to be necessary and appropriate in particular exceptional circumstances. The ECB welcomes the fact that Article 4 of the draft law states that this assistance should be provided 'without prejudice to the requirements derived from [Lietuvos bankas's] participation in the European System of Central Banks', thus providing a safeguard to ensure compliance with the prohibition on monetary financing contained in Article 101 of the Treaty.

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3 See ECB Opinion CON/2005/38 of 26 October 2005 at the request of Lietuvos bankas on a draft law amending Article 125 of the Constitution of the Republic of Lithuania; European Central Bank Convergence Report 2004, pp. 225-226.

11. According to Article 4 of the draft law, Lietuvos bankas, acting as an integral part of the ESCB, defines monetary policy in conjunction with other members of the ESCB and implements it. Since, under Article 12.1 of the Statute, the Community's monetary policy is exclusively formulated by the Governing Council with the result that such monetary policy will extend to Lithuania upon the adoption of the euro by Lithuania, the draft law should be amended to state that Lietuvos bankas 'implements monetary policy' without reference to the definition of monetary policy.

12. The ECB also notes that under Article 4 of the draft law Lietuvos bankas is to promote the sound and efficient operation of payment and securities settlement systems. This provision of the draft law replicates Article 8(1)(8) of the existing Lietuvos bankas Act. For the sake of clarity, Lietuvos bankas could consider amending this provision to expressly include clearing systems.

13. Article 4 of the draft law provides that Lietuvos bankas is to collect from state institutions and economic entities the statistical information necessary for the performance of the ESCB's tasks and Lietuvos bankas's tasks. Under Article 28 of the draft law, state and municipal institutions and economic entities are to provide Lietuvos bankas with the information required for the performance of its functions. Lietuvos bankas might consider whether Article 4 of the draft law should also refer to the municipal institutions from which statistical information is to be collected. In addition, Article 28 of the draft law states that Lietuvos bankas may provide information to the ECB, the NCBs of the other Member States and other institutions, if such information is required for the performance of their functions, provided that Lithuanian laws do not prohibit the provision of such information. For the sake of clarity, the ECB suggests that Article 28 of the draft law should specify that this prohibition does not apply to the provision of statistical information to the ECB, which is subject to the confidentiality regime laid down in Article 8 of Council Regulation (EC) 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank[4].

14. The draft law also amends the Lietuvos bankas Act in relation to the powers of Lietuvos bankas's Board. In particular, Article 5 of the draft law provides, among other things, that the Board shall approve the allocation of the profit for the financial year. The ECB understands that the rules for the allocation of profits are laid down in Article 23(3) of the Lietuvos bankas Act. Lietuvos bankas should consider the possibility of including a reference to Article 23(3) in the provisions in the draft law dealing with the powers of the Board.

15. Article 6 of the draft law expressly states that the Deputy Chairpersons and the Members of the Board of Lietuvos bankas have the right to appeal to the Vilnius District Court against any decision to dismiss them prior to the expiry of their terms of office. The ECB welcomes this provision which reinforces the personal independence required of the members of the decision-making bodies of NCBs under Article 108 of the Treaty. This provision of the draft law must enter into force immediately, and not await the adoption of the euro in Lithuania.

4 OJ L 318, 27.11.1998, p. 8.

16. Article 7 of the draft law amends the voting rules of Lietuvos bankas's Board. In particular, the draft law states that the decisions of the Board shall be adopted with a majority of at least three votes. The ECB welcomes this provision, since it reinforces the principle of collegiality in the decision making of Lietuvos bankas.

17. The ECB understands that Article 8(2) of the draft law refers to Lietuvos bankas's support of the participation of its staff members in cultural and sporting events organised by other central banks. The ECB notes that this activity is not specifically ESCB-related, and recommends that Lietuvos bankas clarifies in the draft law that it may support the participation of its staff members in cultural and sporting events organised by foreign central banks or international monetary institutions.

18. Article 9 of the draft law repeals the reference to the detailed lists of information which constitutes banking secrets and provides a more general definition of banking secrecy. In particular, the ECB notes that Article 38 of the Statute requires that any ESCB-related information falling within the category of non-public information should be covered by the obligation of professional secrecy. The reformulation of the definition of bank secrecy in Article 9 of the draft law is therefore welcome.

19. The ECB notes that the draft law materially amends Chapter 4 of the Lietuvos bankas Act, which deals with monetary policy issues. In particular, the draft law contains provisions similar to those of Articles 17 and 18 of the Statute. The ECB welcomes this amendment, since it reflects a fundamental change in the definition and implementation of monetary policy in Lithuania. As from the day on which Lithuania's derogation is abrogated, the responsibility for defining and implementing Lithuania's monetary policy will be vested in the ESCB. It is suggested that the title of Article 25 of the Lietuvos bankas Act should be amended to reflect the content of this article, i.e.: 'Opening of accounts and monetary policy operations'. In addition, the reference to monetary policy being defined in conjunction with other ESCB members in the proposed new wording of Article 25 of the Lietuvos bankas Act should be removed, as monetary policy for the euro area is exclusively formulated by the Governing Council.

20. The draft law also amends Chapter 5 of the Lietuvos bankas Act with a view to providing that Lietuvos bankas should manage its foreign reserves in accordance with the requirements of Community law. Under Article 105(2) of the Treaty, one of the basic tasks to be carried out through the ESCB is to hold and manage the official foreign reserves of the Member States. The ECB notes that the draft law does not amend Article 36 of the Lietuvos bankas Act, which states that Lietuvos bankas may, on its own initiative, or in accordance with an agreement with the Lithuanian Government, enter into settlement agreements with foreign public and/or private institutions on behalf of the Lithuanian Government. The draft law should more precisely reflect the fact that the Lithuanian Government may not influence the management of the official foreign reserves held by Lietuvos bankas. The management of the official foreign reserves will be carried

out independently by Lietuvos bankas as an integral part of the ESCB, upon the adoption of the euro by Lithuania[5].

21. Article 29 of the draft law concerns sanctions for non-compliance with statistical obligations and confers on Lietuvos bankas a right to impose sanctions with respect to infringements in the field of statistics, in so far as non-ESCB tasks are concerned. As certain situations relating to the ESCB's statistics may not be covered by the ECB's sanctions regime, it is suggested that Article 29 of the draft law should state that Lietuvos bankas has a right to impose fines and penalties on economic entities for breaches of the requirement to submit statistical information to Lietuvos bankas, in so far as such breaches do not fall within the scope of the ECB's sanctions regime.

22. The ECB notes that Article 37 of the Lietuvos bankas Act provides for the prohibition on monetary financing without, however, referring to the relevant provisions of Community law. The Lietuvos bankas Act should state that the prohibition on monetary financing derives from Article 101 of the Treaty and that the definitions for the application of this prohibition are specified by the Council in accordance with the Treaty[6]. Alternatively, Article 37 could simply be deleted since the relevant provisions of Community law, namely Article 101 of the Treaty and Regulation No 3603/93, are directly applicable in the Member States.

23. The ECB also notes that Lithuanian law should contain safeguards against interference by government institutions in Lietuvos bankas's activities and, in particular, ESCB-related tasks. The ECB observes that, under the Act on the State Audit Office, this Office is empowered to check whether the State's property is being effectively managed. The ECB emphasises that the activities of the State Audit Office should not interfere with the review undertaken by the external auditor of Lietuvos bankas approved under the procedure which would be applicable to Lithuania upon the adoption of the euro by Lithuania, set out in Community law. To this end, the Lietuvos bankas Act and any other legal acts should include sufficient safeguards concerning the review of Lietuvos bankas's activities to ensure the independence of Lietuvos bankas[7].

5 See ECB Opinion CON/2002/18 of 9 July 2002 at the request of the Belgian Ministry of Finance on a draft for a new Article 879 of the Companies Code, introduced by the Programme Law, as well as several articles interpreting and amending the Organic Law of the Nationale Bank van België/Banque Nationale de Belgique, introduced by paragraphs 6 to 10 of Article 141 of the draft law on the prudential supervision of the financial sector and financial services.

6 Cf. Article 103(2) of the Treaty and Council Regulation No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b (1) of the Treaty (OJ L 332, 31.12.1993, p. 1).

7 Cf. ECB Opinion CON/2002/22 of 2 September 2002 at the request of the Swedish Ministry of Finance on a draft legislative proposal establishing the National Audit, including proposed amendments to the Sveriges Riksbank Act (1988:1385).

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

Done at Frankfurt am Main, 30 December 2005.

[signed]

*The President of the ECB*

Jean-Claude TRICHET