EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 5 December 2013

on the legal status of Lietuvos bankas' assets and the scope of its public audit

(CON/2013/85)

Introduction and legal basis

On 11 November 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 and on a draft law amending the Law on the State Audit Office (hereinafter together the 'draft laws'). On 26 November 2013, the ECB received updated draft laws, which form the basis of this opinion.

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 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[1], as the draft laws relate 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 laws

1.1 The draft amendments to the Law on Lietuvos bankas are aimed at specifying the legal status of Lietuvos bankas' assets in order to address concerns about the institutional and financial independence of Lietuvos bankas. The draft amendments to the Law on the State Audit Office are intended to define the scope of the public audit of Lietuvos bankas conducted by the State Audit Office.

As part of the preparations for the introduction of the euro in Lithuania, the draft laws aim at dealing with the Lithuanian legal non-convergence issues referred to in the ECB's Convergence Reports of 2010 and 2012[2].

1.2 The draft amendments to the Law on Lietuvos bankas explicitly specify that the Lithuanian State's ownership in Lietuvos bankas is expressed by the capital of Lietuvos bankas and that Lietuvos bankas has legal title to the assets belonging to it.

1.3 The draft amendments to the Law on the State Audit Office specify that the public audit of Lietuvos bankas conducted by the State Audit Office: (a) is without prejudice to the activities of

1 OJ L 189, 3.7.1998, p. 42.

2 See the ECB's Convergence Report, of 2012, p. 242.

Lietuvos bankas' independent external auditors; (b) covers Lietuvos bankas' performance audit, with the exception of its European System of Central Banks and Eurosystem tasks; and (c) respects Lietuvos bankas' independence and prohibits the State Audit Office from giving instructions to Lietuvos bankas, the members of its decision-making bodies and staff as regards the performance of their tasks.

In the Law on the State Audit Office, the term 'performance audit' is defined as 'evaluation of the economy, efficiency, and effectiveness of the public and internal administration activities of the audited entity'[3].

2. Legal status of Lietuvos bankas' assets

2.1 The ECB welcomes the fact that the draft amendments to the Law on Lietuvos bankas clarify the legal status of Lietuvos bankas' assets as well as the State's ownership in Lietuvos bankas, which is expressed by the capital of Lietuvos bankas.

2.2 The ECB also welcomes the fact that the legal status of Lietuvos bankas' assets is specified by virtue of the law. The ECB understands that the requirement for Lietuvos bankas to apply to an administrative authority, i.e. the State Enterprise Centre of Registers, with regard to the change of the rights *in rem* of its assets, for which no deadline is given[4], is part of national administrative procedures and does not make the specification of the legal status of Lietuvos bankas' assets conditional upon the actions of Lietuvos bankas or of those of the administrative authorities.

2.3 Based on this understanding, the draft amendments to the Law on Lietuvos bankas address the ECB's concerns as regards the institutional and financial independence of Lietuvos bankas, as raised in previous ECB opinions[5] and Convergence Reports[6].

2.4 Since that clarification will continue to apply if and when Lithuania adopts the euro, the Law on Lietuvos bankas that will enter into force on the introduction of the euro in Lithuania[7] should also be amended accordingly. Additionally, if the provisions of such future draft law amending the abovementioned Law on Lietuvos bankas that will enter into force on the introduction of the euro in Lithuania are different from the provisions of the current draft amendments to the Law on Lietuvos bankas, the ECB should be consulted on such a future draft law.

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3 Article 2(8) of the Law on the State Audit Office.

4 Article 2 of the draft amendments to the Law on Lietuvos bankas.

5 See paragraph 2.1 of Opinion CON/2010/42; paragraph 4.3.1 of Opinion CON/2011/91; and paragraph 3.4.2. of Opinion CON/2011/99. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

6 See the ECB's Convergence Report, 2012, p. 242.

7 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 140(2) of the Treaty.

3. Scope of the public audit of Lietuvos bankas

The ECB welcomes the fact that the scope of the public audit of Lietuvos bankas conducted by the State Audit Office is clarified in national legislation, which addresses the ECB's concerns stated in the Convergence Reports as regards Lietuvos bankas' independence[8].

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

Done at Frankfurt am Main, 5 December 2013.

[signed]

The President of the ECB

Mario DRAGHI

8 See ECB's Convergence Report, 2012, p. 242.