EUROPEAN CENTRAL BANK

EUROSYSTEM

EN **ECB-PUBLIC**

OPINION OF THE EUROPEAN CENTRAL BANK

of 1 December 2017

on conferring upon Lietuvos bankas the function of a fiscal agency of the International Monetary Fund

(CON/2017/53)

Introduction and legal basis

On 20 November 2017 the European Central Bank (ECB) received a request from Lietuvos bankas, following correspondence with the Ministry of Finance, for an opinion on a draft law on Lithuania's membership of the International Monetary Fund (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 indent of Article 2(1) of Council Decision 98/415/EC[1], 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 purpose of the draft law is to establish the principles and procedures for the fulfilment of the obligations related to Lithuania's membership of the International Monetary Fund (IMF).

1.2 The draft law provides that the Lithuanian Parliament shall decide on the change of the amount of Lithuania's quota in the IMF.

1.3 The draft law further provides as follows: (a) according to Article V(1) of the Articles of Agreement of the International Monetary Fund (hereinafter the 'IMF Articles of Agreement'), Lietuvos bankas is a fiscal agency of the IMF that executes the IMF's financial operations on behalf of Lithuania, and Lietuvos bankas uses its financial assets to execute these financial operations; (b) in accordance with Article XIII(2)(a) of the IMF Articles of Agreement, Lietuvos bankas is the depository of the IMF; (c) the special drawing rights (SDRs) allocated to Lithuania by the IMF are part of the official foreign reserves of Lietuvos bankas, which are managed, used and disposed of in accordance with the Law on Lietuvos bankas[2]; (d) Lietuvos bankas decides on participation in the IMF's financial initiatives for which the financial assets of Lietuvos bankas are to be used; and (e) the Government of Lithuania decides on Lithuania's participation in the IMF financial initiatives for which State budgetary funds are to be used.

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1 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).

2 Lietuvos Respublikos Lietuvos bankos įstatymas, Nr. I-678, Valstybės žinios, 1994-12-23, Nr. 99-1957.

1.4 The draft law provides that Lithuania shall be represented in the Board of Governors of the IMF by the Chairman of the Board of Lietuvos bankas as Lithuania's governor, with the Minister of Finance as the alternate governor. The draft law further provides that Lietuvos bankas and the Ministry of Finance shall cooperate in accordance with a mutually agreed procedure, coordinate Lithuania's position and exchange information on all matters concerning its membership of the IMF.

1.5 Finally, the draft law provides that within 30 business days from the entry into force of the draft law Lietuvos bankas shall take over the rights and obligations relating to the performance of the functions of the fiscal agency of the IMF from the Ministry of Finance, and shall return to the State budget the amount paid by the Ministry of Finance for Lithuania's quota at the IMF corresponding to the balance of the IMF accounts No 1 and No 2, presently held with Lietuvos bankas, at the date of entry into force of the draft law.

2. New tasks of Lietuvos bankas

2.1 While Lietuvos bankas already acts as the IMF's depository[3], the draft law considerably expands its role in discharging Lithuania's obligations under the IMF Articles of Agreement by conferring upon it a number of new IMF-related tasks.

2.2 The ECB underlines that a proposed conferral of tasks on a national central bank (NCB) in the European System of Central Banks (ESCB) must be assessed against the prohibition on monetary financing under Article 123 of the Treaty. For the purposes of that prohibition, Article 1(1)(b)(ii) of Council Regulation (EC) No 3603/93[4] defines 'other type of credit facility', inter alia, as 'any financing of the public sector's obligations vis-à-vis third parties'.

Ensuring that Member States implement a sound budgetary policy is one of the key objectives of the monetary financing prohibition, which may not be circumvented[5]. Therefore, the task of financing measures, which are normally the responsibility of the Member States, and which are financed from their budgetary sources rather than by the NCBs, must not be entrusted to NCBs. To decide what constitutes financing of the public sector's obligations vis-à-vis third parties, which can be translated as the provision of central bank financing outside the scope of central bank tasks, it is necessary to carry out, on a case-by-case basis, an assessment of whether the task to be undertaken by an NCB is a central bank task or a government task, i.e. a task within the responsibility of the Member States. In other words, adequate safeguards must be in place to ensure that circumventions of the objective of the monetary financing prohibition of maintaining a sound budgetary policy of Member States do not take place.

2.3 As part of its discretion in the exercise of its duty, on the basis of Article 271(d) of the Treaty and Article 35.6 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'), to ensure that NCBs honour the obligations laid down

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3 See paragraph 2 of the Resolution No 264 of the Government of the Republic of Lithuania of 14 April 1992 on admission to the International Monetary Fund and the World Bank.

4 Council Regulation (EC) 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).

5 Article 123 of the Treaty also serves the objective of maintaining price stability and reinforces central bank independence.

by the Treaty, the Governing Council has endorsed safeguards of that kind in the form of criteria for determining what may be seen as falling within the scope of a public sector's obligation within the meaning of Article 1(1)(b)(ii) of Regulation (EC) No 3603/93 or, in other words, what constitutes a government task as follows:

First, central bank tasks are in particular those tasks that are related to the tasks that have been conferred upon the ECB and the NCBs by the Treaty and the Statute of the ESCB. These tasks are mainly defined in Article 127(2), (5) and (6) and Article 128(1) of the Treaty, as well as Article 22 and Article 25.1 of the Statute of the ESCB.

Second, as Article 14.4 of the Statute of the ESCB allows NCBs to perform 'other functions', new tasks, i.e. tasks that are not related to tasks that have been conferred upon the ECB and the NCBs, are not precluded per se. However, new tasks that are undertaken by an NCB and which are atypical of NCB tasks or which are clearly discharged on behalf of and in the exclusive interest of the government or of other public sector entities should be considered government tasks.

Third, an important criterion for qualifying a new task as atypical of an NCB task or as being clearly discharged on behalf of and in the exclusive interest of the government or other public sector entities is the impact of the task on the institutional, financial and personal independence of that NCB.

In particular, the following aspects should be taken into account:

(a) whether the performance of the new task creates conflicts of interest with existing central bank tasks which are not adequately addressed and does not necessarily complement those existing central bank tasks. If a conflict of interest arises between existing and new tasks, sufficient safeguards to mitigate that conflict should be in place. The complementarity between a new task and the existing central bank tasks should not be interpreted broadly, so as to lead to the creation of an indefinite chain of ancillary tasks. Such complementarity should be examined also in relation to the financing of those tasks;

(b) whether without new financial resources the performance of the new task is disproportionate to the NCB's financial or organisational capacity and may have a negative impact on the capacity to perform properly the existing central bank tasks;

(c) whether the performance of the new task fits into the institutional set-up of the NCB in the light of central bank independence and accountability considerations;

(d) whether the performance of the new task harbours substantial financial risks;

(e) whether the performance of the new task exposes the members of the NCB decision-making bodies to political risks which are disproportionate and may also have an impact on their personal independence and, in particular, on the guarantee of term of office set out in Article 14.2 of the Statute of the ESCB.

2.4 On the basis of the criteria set out above, the following paragraphs assess whether the new tasks of Lietuvos bankas are in line with the monetary financing prohibition.

2.4.1 *Tasks related to the tasks conferred upon the ECB and the NCBs by the Treaty and the Statute of the ESCB*

The Treaties acknowledge the role that the NCBs and the ECB play vis-à-vis the IMF. The basic tasks to be carried out through the ESCB include holding and managing the official foreign reserves of the Member States[6]. Under the Statute of the ESCB, the ECB and the NCBs may establish relations, where appropriate, with international organisations and conduct all types of banking transactions in their relations with such organisations, including borrowing and lending operations[7]. The ECB and the NCBs may act as fiscal agents for, inter alia, central governments[8]. The NCBs are allowed to perform transactions in fulfilment of their obligations towards international organisations[9]. The ECB may hold and manage IMF reserve positions and SDRs and provide for the pooling of such assets[10]. Against this background, the new tasks to be conferred upon Lietuvos bankas are related to those conferred upon the ECB and the NCBs by the Treaty and the Statute of the ESCB.

2.4.2 *Tasks which are atypical of NCB tasks*

The ECB notes that the NCBs in the Eurosystem and the ESCB play an important role in representing their respective countries in the IMF, within the framework of the country-based membership structure of the IMF. In accordance with Article V(1) of the IMF Articles of Agreement[11], each member country must designate the agencies through which it will deal with the IMF. In the majority of the euro area Member States the NCBs are designated as such agencies. Furthermore, the NCBs play an important role in representing their Member States in the decision-making bodies of the IMF. Governors of the individual NCBs of a majority of euro area Member States[12] serve as that Member State's governor on the IMF's Board of Governors, while those of the remainder serve as an alternate governor on the IMF's Board of Governors. Moreover, in several cases the governor of an NCB is an alternate member of the International Monetary and Financial Committee (IMFC). In addition, many NCBs are closely involved in the selection procedure for the election of the Executive Director representing their country in the IMF's Executive Board and the selection of the respective Alternate Executive Director(s) to be appointed by the elected Executive Director, and in some cases the NCBs make the selection. In this context, the new tasks conferred upon Lietuvos bankas by the draft law are not atypical of an NCB task.

2.4.3 *Tasks clearly discharged on behalf of and in the exclusive interest of the government*

The membership structure of the IMF is country based. Article V(1) of the IMF Articles of Agreement states that each member shall deal with the Fund only through its treasury, central

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6 See the third indent of Article 127(2) of the Treaty.

7 See the first and fourth indents of Article 23 of the Statute of the ESCB.

8 See Article 21.2 of the Statute of the ESCB.

9 See Article 31.1 of the Statute of the ESCB.

10 See Article 30.5 of the Statute of the ESCB.

11 See Section 1 of Article V of the IMF Articles of Agreement, which provides that each member country must deal with the Fund only through its Treasury, central bank, stabilisation fund or other similar agency, and that the Fund must deal only with or through the same agencies.

12 This is currently the case in respect of Belgium, Estonia, Germany, Latvia, Lithuania, the Netherlands, Austria, Slovakia, Slovenia, Finland and Portugal.

bank, stabilisation fund, or other similar fiscal agency, and the Fund shall deal only with or through the same agencies. To this end, the draft law designates Lietuvos bankas as a fiscal agency of the IMF, which shall carry out financial operations of the IMF on behalf of Lithuania. Therefore, the new tasks conferred on Lietuvos bankas may be considered as performed exclusively in Lithuania's interests.

2.4.4 *Extent to which performance of the new task creates conflicts of interest with existing central bank tasks*

The new tasks conferred upon Lietuvos bankas by the draft law do not create any conflicts of interest with the other central bank tasks that it performs, and indeed complement its existing task of managing, using and disposing of its official foreign reserves[13].

2.4.5 *Extent to which performance of the new task is disproportionate to the financial or organisational capacity of Lietuvos bankas*

The principle of financial independence requires that the Member States may not put their NCBs in a position where they have insufficient financial resources to carry out both their ESCB-related tasks and their national tasks, from an operational and financial perspective. Lietuvos bankas will have to fulfil the financial obligations related to the IMF quota assigned to Lithuania. As provided under the draft law, Lietuvos bankas will use its own financial assets for carrying out the financial operations of the IMF on behalf of Lithuania[14]. The ECB understands that the quota allocated to Lithuania by the IMF is 441,6 million SDRs (currently equivalent to about EUR 554 million[15]) while the financial assets managed by Lietuvos bankas amount to about EUR 14,5 billion[16]. Such financing by Lietuvos bankas results in it having foreign claims that have all the characteristics of reserve assets. Furthermore, it is not expected that the performance of a fiscal agency task by Lietuvos bankas and its participation in the IMF's financial operations will create disproportionate operational burdens for Lietuvos bankas. Taking this into account, the new tasks assigned to Lietuvos bankas are not disproportionate to its financial or organisational capacity.

2.4.6 *Extent to which performance of the new task fits into the institutional set-up of Lietuvos bankas, in the light of central bank independence and accountability considerations*

The performance of the new tasks is not problematic from the perspective of the institutional set-up of Lietuvos bankas, and does not raise any accountability or personal and institutional independence concerns. Lietuvos bankas will decide on participation in financial initiatives of the IMF to be implemented using its financial assets[17] and the Chairman of its Board will represent Lithuania in the Board of Governors of the IMF[18].

13 See Article 8(1)(3) of the Law on the Bank of Lithuania.
14 See Article 4(2) of the draft law.
15 Based on the information provided in the explanatory memorandum of the draft law.
16 Based on the annual report of Lietuvos bankas of 2016.
17 See Articles 6 and 7 of the draft law.
18 See Article 8 of the draft law.

2.4.7 *Extent to which the performance of tasks harbours substantial financial risks*

The explanatory memorandum of the draft law indicates that the conferral of the new tasks upon Lietuvos bankas will expose it to credit and foreign exchange risks[19]. Given the basic task of NCBs to hold and manage the official foreign reserves of the Member States, Lietuvos bankas is well placed to manage these financial risks arising from its participation in IMF financial operations.

2.4.8 *Extent to which performance of the new task exposes members of the decision-making bodies of Lietuvos bankas to disproportionate political risks and impacts on their personal independence*

The performance of the tasks conferred under the draft law does not expose the members of the decision-making bodies of Lietuvos bankas to disproportionate political risks or impact upon their personal independence.

2.4.9 *Conclusion*

The ECB considers that the IMF-related tasks to be conferred upon Lietuvos bankas under the draft law are central banking tasks. These new tasks are related to the tasks conferred upon the ECB and the NCBs by the Treaty and the Statute of the ESCB, and a majority of euro area NCBs perform such tasks. While these tasks, within the country-based system of the IMF, are performed exclusively in the interests of Lithuania, this does not create conflicts of interest with existing central bank tasks and is not disproportionate to the financial or organisational capacity of Lietuvos bankas. While the conferral of these new tasks will expose Lietuvos bankas to additional credit and foreign exchange risks, it is well placed to manage financial risks arising from participation in the IMF's financial operations in view of its existing task of holding and managing its official foreign reserves. Furthermore, the new task fits into the institutional set-up of Lietuvos bankas, also in the light of central bank independence and accountability considerations, and does not expose the members of its decision-making bodies to disproportionate political risk or impact upon their personal independence.

3. Return of funds paid by Ministry of Finance in respect of Lithuania's IMF quota

3.1 Lietuvos bankas shall be required within 30 business days from the entry into force of the draft law to return to the State budget the amount paid by the Ministry of Finance for Lithuania's IMF quota, corresponding to the balance of the IMF accounts No 1 and No 2 held within Lietuvos bankas on the date of the entry of the draft law[20]. The ECB notes that Lietuvos bankas, when making payments to the State budget, must comply with the monetary financing prohibition under Article 123 of the Treaty, which is subject to certain exemptions contained in Article 123(2) of the Treaty, Article 21.2 of the Statute of the ESCB and Regulation (EC) No 3603/93. In particular, Article 7 of Regulation (EC) No 3603/93 provides that the financing by NCBs of obligations falling upon the public sector vis-à-vis the IMF is not regarded as a credit facility within the meaning of Article 123 of the Treaty. Recital 14 of Regulation (EC) No 3603/93 clarifies the rationale behind this exemption by stating that it is appropriate to authorise the financing by the NCBs of obligations

19 See page 2 of the explanatory memorandum to the draft law.

20 See Article 10(3)(2) of the draft law.

falling upon the public sector vis-à-vis the IMF because such financing 'results in foreign claims which have all the characteristics of reserve assets'. Therefore, the exemption in Article 7 of Regulation (EC) No 3603/93 must be interpreted in line with this rationale[21].

3.2 Reserve assets have been defined as those external assets that are readily available to and controlled by monetary authorities for meeting balance of payments financing needs, for interventions in exchange markets to affect the currency exchange rate, and for other related purposes, such as maintaining confidence in the currency and the economy, and serving as a basis for foreign borrowing[22]. Under this definition reserve assets must be foreign currency assets and, other than gold bullion, must be claims on non-residents. In this respect, the payment by Lietuvos bankas to the State budget of the amount corresponding to the balance of the IMF accounts No 1 and No 2 will result in Lietuvos bankas taking over from the Ministry of Finance the foreign currency claims, denominated in SDR, against non-resident persons (the IMF) that have all the characteristics of reserve assets[23].

3.3 Based on the foregoing, the ECB considers that the transfer to the State budget by Lietuvos bankas of the amount of funds paid by the Ministry of Finance for Lithuania's quota at the IMF, as referred to in paragraph 3.1, complies with Article 7 of Regulation (EC) No 3603/93 and does not infringe the monetary financing prohibition[24].

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

Done at Frankfurt am Main, 1 December 2017.

[signed]

The President of the ECB

Mario DRAGHI

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21 Consistent with this interpretation, see Opinions CON/2005/29 and CON/2013/16. With regard to the issue of NCBs' financing of IMF quota increases, see Opinions CON/2012/65 and CON/2011/97. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

22 See International Monetary Fund, Balance of Payments and International Investment Position Manual, 6th edn., 2009, pp. 111-18.

23 Point 2.1(c) in the 'Assets' table in Annex IV to Guideline (EU) 2016/2249 of the European Central Bank of 3 November 2016 on the legal framework for accounting and financial reporting in the European System of Central Banks (ECB/2016/34) (OJ L 347, 20.12.2016, p. 37) lists under 'other claims' any 'general arrangements to borrow, loans under special borrowing arrangements, deposits made to trusts under the management of the IMF' as 'Receivables from the IMF'.

24 See also Opinions CON/2009/100, CON/2010/40 and CON/2011/10.