



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 14 June 2005

at the request of Lietuvos bankas
on a draft law on the adoption of the euro

(CON/2005/21)

Introduction

1. On 9 May 2005, the European Central Bank (ECB) received a request from Lietuvos bankas for an opinion on *Lietuvos Respublikos euro įvedimo Lietuvos Respublikoje įstatymo projektas* (draft law on the adoption of the euro in the Republic of Lithuania (hereinafter the ‘draft law’)).
2. The ECB’s competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the first three 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 provisions¹, as the draft law relates to currency matters, means of payment and to the tasks of Lietuvos bankas, insofar as the draft law imposes certain duties on 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.

Structure and scope of the draft law

3. The draft law covers a wide range of topics with a view to ensuring a smooth introduction of the euro in Lithuania. It either replaces or amends the existing currency law and regulates issues relating to the introduction of the euro in Lithuania.
4. In particular, the draft law provides as follows: (i) for the introduction of the euro as the monetary unit of Lithuania and that euro banknotes and coins will become legal tender in Lithuania, (ii) for the publication of images of euro banknotes and coins and euro cent coins, (iii) for the exchange of Lithuanian litas into euro, (iv) for the conversion of balances in litas on clients’ accounts into euro, (v) that all references to the litas in Lithuanian legal acts, contracts and other documents will be replaced by references to the euro, (vi) that all references to national interbank reference rates will be replaced by references to EONIA and EURIBOR, (vii) for the renominalisation of securities, (viii) for the dual display of prices, (ix) for the exchange of mutilated litas and euro and of litas withdrawn from circulation, (x) for the withdrawal of litas from circulation and the continuing status of litas as legal tender for 15 calendar days after the date of introduction of the euro, (xi) that

¹ OJ L 189, 3.7.1998, p. 42.

breaches of the draft law will be sanctioned in accordance with Lithuanian law and, (xii) the temporary operation of certain laws concerning the litas. Moreover the draft law: (i) refers to the irrevocably fixed exchange rate between the litas and the euro and sets out some supplementary rounding rules, (ii) instructs the Lithuanian Government to prepare laws necessary for the implementation of the draft law, (iii) mandates the Lithuanian Government to adopt legal acts in the fields of employment and social security law with a view to expressing relevant amounts in euro rather than in litas, (iv) suggests that the Lithuanian Government, Lietuvos bankas, the Lithuanian Securities Commission, Insurance Supervisory Commission and other institutions prepare legal acts, recommendations and explanations relating to the introduction of the euro, and (v) repeals the Act on the credibility of the litas.

An annex to the draft law lists the Community legal acts which are to be implemented by adopting the draft law. The ECB understands that the inclusion of such an annex is consistent with legislative practice in Lithuania. The draft law does not provide for the date of its entry into force. Instead, the reference to the date in Article 16(1) of the draft law is left blank, on the understanding that it will be completed later.

5. Article 2 of the draft law defines the following three concepts: (i) the date of introduction of the euro; (ii) the irrevocably fixed conversion rate between the euro and litas; and (iii) the exchange of litas into euro. First, the date of introduction of the euro is defined as a date laid down in a decision of the Council to abrogate the derogation concerning Lithuania by following the procedure laid down in Article 122(2) of the Treaty. Second, the irrevocably fixed conversion rate between the euro and the litas is defined as the exchange rate between the euro and the litas, which will be laid down by a decision of the Council following the procedure laid down in Article 123(5) of the Treaty. Third, the exchange of litas into euro is explained as the exchange of litas banknotes and coins and litas cent coins for euro banknotes and coins and euro cent coins as well as the crediting of a client's account by applying the irrevocably fixed conversion rate.

Timing for the adoption of the draft law and preconditions for its adoption

6. The ECB notes that current Community secondary legislation on monetary matters (in particular Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro², Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro³ and Council Regulation (EC) No 2866/98 of 31 December 1998 on the conversion rates between the euro and the currencies of the Member States adopting the euro⁴), although forming part of the *acquis communautaire* of both participating and non-participating Member States, only provides for the euro changeover in the original 11 participating Member States (and later in

² OJ L 162, 19.6.1997, p. 1. Regulation as last amended by Council Regulation (EC) No 2595/2000 of 27 November 2000 (OJ L 300, 29.11.2000, p. 1).

³ OJ L 139, 11.5.1998, p. 1. Regulation as last amended by Council Regulation (EC) No 2596/2000 of 27 November 2000 (OJ L 300, 29.11.2000, p. 2).

⁴ OJ L 359, 31.12.1998, p. 1. Regulation as last amended by Council Regulation (EC) No 1478/2000 of 19 June 2000 (OJ L 167, 7.7.2000, p. 1).

relation to Greece, which adopted the euro on 1 January 2001). This legislation does not, however, address the euro changeover in Member States joining the euro area at a later stage.

Considering the above, the ECB provides its comments on the draft law with reference to Community secondary legislation currently in force and this opinion is issued without prejudice to any future Community legislation relating to the euro changeover in any of the current Member States with a derogation.

7. The ECB understands that Lietuvos bankas expects the draft law to be adopted in the second half of 2005, and that implementing regulations will be adopted by 1 July 2006. However, although the date of entry into force of the draft law is left blank in the draft law, it is intended that the draft law and related implementing regulations should enter into force only upon abrogation of the derogation in respect of Lithuania. The ECB understands the purpose of adopting national legislation supplementing Community legislation on monetary matters at an early stage. However, it should be remembered that the exclusive competence on monetary matters regarding the euro lies with the Community. National legislation on monetary matters may only complement Community law when Community law provides for it, as was the case with Regulation (EC) No 974/98. Therefore, as a preliminary remark, the ECB considers that, insofar as the draft law relates to monetary matters which fall within the Community's exclusive competence, it would be legally undesirable as well as impractical to adopt the draft law before the Council itself takes a decision to allow for national legislation in Lithuania regarding the introduction of the euro or at least before any agreed draft of the relevant Community legal act is published in the *Official Journal of the European Union*. Early adoption of the draft law implies a risk of inconsistency with forthcoming Community legislation and might require further adaptation of national law once Community legislation is adopted. Thus, the desired objective of providing for more legal certainty would not be achieved but rather compromised.
8. Article 13 of the draft law proposes a dual circulation period of 15 calendar days with respect to banknotes and coins denominated in litas and states that 'litas banknotes and coins and litas cent coins shall be used as legal tender and means of payment which it is mandatory to accept for 15 calendar days following the date of the adoption of the euro'. In addition, Lietuvos bankas and commercial banks as well as branches of foreign banks will be prohibited from the date of introduction of the euro from dispensing litas banknotes and coins to their clients. In this context, the ECB recalls that Article 15 of Regulation (EC) No 974/98, which governs banknotes and coins denominated in a national currency unit, was drafted at a time when no euro banknotes and coins were available and people and businesses still had to adapt and get used to the new currency, whereas the situation is different now, when euro banknotes and coins are widely available in Member States with a derogation. Given the difference in the situation, it could also well be that Community law establishes no dual circulation period or a very short one.

As an additional consideration, the Lithuanian authorities should clarify the precise meaning of the expression 'shall be used as legal tender and means of payment which it is mandatory to accept' in

Article 13 of the draft law, and evaluate whether this provision must apply to all natural and legal persons.

9. The ECB notes that no amendments have been proposed to the Lietuvos bankas Act and to the Lithuanian Constitution with respect to amendments to Lithuanian law necessary to comply with the Treaty and the Statute of the European System of Central Banks and of the European Central Bank. The ECB identified various aspects pertaining to Lithuania's legal convergence in its Convergence Report 2004⁵, and the Lithuanian authorities need to address these well before the introduction of the euro in Lithuania. It should be noted that this opinion is without prejudice to any future convergence reports which the ECB is required to compile under Article 122(2) of the Treaty.

Name of the single currency

10. The ECB notes that the Lithuanian language version of the draft law refers to the 'euras' in the nominative singular case as opposed to the 'euro'. In this regard the ECB would like to remind the Lithuanian authorities that Article 2 of Regulation (EC) No 974/98 stipulates that '...the currency of the participating Member States shall be the euro'⁶. Recital 2 to this Regulation notes that, at its meeting in Madrid on 15 and 16 December 1995, the European Council considered that '...the name of the single currency must be the same in all the official languages of the European Union, taking into account the existence of different alphabets'. Taken together, these two provisions make it clear that the name of the single currency is the 'euro' and that this name should be identical in legal acts published in all Community languages. Furthermore, the ECB would like to note that new Member States are under an unquestionable legal obligation to comply with political agreements concluded by the European Council pursuant to Article 5(3) of the Act concerning the conditions of accession⁷. Thus, conclusions of the Madrid European Council with regard to the name of the single currency are binding on the new Member States even if they were not recorded in the recitals to Regulation (EC) No 974/98. The Community, as the exclusive holder of competence in monetary matters, determines alone the name of the single currency. As a single currency, the name of the euro needs to be identical in the nominative singular case in all Community languages to ensure that its singleness is apparent. On the basis of these legal considerations and in view of the supremacy of Community law the ECB is of the opinion that the name of the single currency in the nominative singular case is legally required to be consistently rendered in all national legal acts as the 'euro'.

⁵ Published in October 2004 pursuant to Article 122(2) of the Treaty.

⁶ See the English language version of Regulation (EC) No 974/98 and all the other official language versions, with the exception of the Greek language version.

⁷ Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ L 236, 23.9.2003, p. 33).

Recognition of the Community's competence in monetary matters

11. Article 3(1) of the draft law states that from the date of introduction of the euro, the monetary unit of Lithuania shall be the euro. Article 3(2) of the draft law also states that euro banknotes issued by the ECB and by the national central banks (NCBs) and euro coins and euro cent coins issued by the Member States whose currency is the euro shall be legal tender in Lithuania and, in compliance with Community law, it is mandatory to accept them as a means of payment.

In addition, Article 8(1) of the draft law provides that, with effect from the date of introduction of the euro, references to the litas in legal acts, agreements and other documents which remain effective thereafter for the remainder of their term shall be regarded as references to the euro, and that amounts in litas shall be regarded as having been expressed in euro and shall be converted following the procedure laid down in the draft law.

The combined effect of Articles 3 and 8(1) of the draft law is therefore to substitute the euro for the litas. In this context, the ECB would like to make the following observations relating to the direct applicability of Community regulations.

12. The ECB notes that, in accordance with Article 249 of the Treaty, a Community regulation 'shall be binding in its entirety and directly applicable in all Member States'. A Community regulation therefore does not need to be transposed into the domestic law of Member States⁸. If a Member State transposes a regulation into national law, the fact that the provision was a Community law provision may be obscured. In addition, if a Member State transposes a regulation in even a slightly different form, there is a risk that its content will be altered.

Nonetheless, Member States may provide for appropriate sanctions which were not provided for in a regulation and may continue to regulate various related issues which are not covered in a regulation⁹ or may use appropriate methods to prevent breaches of Community rules if national law is in conformity with the Community rules¹⁰. Pursuant to Article 10 of the Treaty, Member States are even obliged to take necessary measures to ensure fulfilment of the obligations arising from the Treaty or resulting from action taken by Community institutions. Also, a regulation may itself require Member States to adopt implementing measures¹¹. The technique of incorporating provisions of Community regulations into national law may only be accepted under exceptional circumstances. In this regard, the Court of Justice has stated, in Case 272/83 *Commission v Italian Republic*¹², that in that particular instance the application in Italy of a system for encouraging the

⁸ As stated by the Court of Justice of the European Communities in Case 34/73 *Fratelli Variola S.p.A. v Amministrazione italiana delle Finanze* [1973] ECR 981, '[b]y virtue of the obligations arising from the Treaty and assumed on ratification, Member States are under a duty not to obstruct the direct applicability inherent in regulations and other rules of Community law. Strict compliance with this obligation is an indispensable condition of simultaneous and uniform application of Community regulations throughout the Community'. This position was also reiterated in Case 50/76 *Amsterdam Bulb BV v Produkschap voor Siergewassen* [1977] ECR 137.

⁹ Case 50/76 above.

¹⁰ Case 39/70 *Norddeutsches Vieh- und Fleischkontor GmbH v Hauptzollamt Hamburg-St. Annen* [1971] ECR 49.

¹¹ Case C-403/98 *Azienda Agricola Monte Arcosu v Regione Autonoma della Sardegna* [2001] ECR I-103.

¹² [1985] ECR 1057.

formation of producer groups could not be ensured by Community regulations alone, it rather depended on the combination of a number of provisions adopted at Community, national and regional level. In such special circumstances, the fact that regional laws incorporate, for the sake of coherence and in order to make them comprehensible to the persons to whom they apply, some elements of Community regulations, cannot be regarded, in the Court's view, as a breach of Community law.

13. Considering that Community secondary legislation on monetary matters will apply directly in Lithuania once its application is extended to Lithuania following the procedure laid down in the Treaty, the ECB suggests deleting Articles 3 and 8(1) of the draft law, since these provisions merely repeat Articles 2, 3 and 14 of Regulation (EC) No 974/98 and Article 106(1) of the Treaty. The ECB considers that the aforementioned provisions of Regulation (EC) No 974/98 and the Treaty are sufficiently coherent and comprehensive making it unnecessary to repeat or reflect them in Lithuanian law. Alternatively, these provisions of the draft law should refer explicitly to the Community legal acts on the basis of which the euro is being introduced in Lithuania.
14. As an additional point, Article 8(1) of the draft law deals with references to the litas in the following instruments: (i) legal acts; (ii) contracts; and (iii) other documents. To contrast, Article 14 of Regulation (EC) No 974/98 refers to 'legal instruments', the latter concept being defined in the second indent of Article 1 of Regulation (EC) No 974/98 as 'legislative and statutory provisions, acts of administration, judicial decisions, contracts, unilateral legal acts, payment instruments other than banknotes coins, and other instruments with legal effect'. The ECB considers that Article 8(1) of the draft law is insufficiently precise in comparison and therefore proposes that it should be deleted or, alternatively, that the wording of the draft law is aligned with the provisions of Regulation (EC) No 974/98.

The concept of legal tender

15. With respect to the mandatory acceptance of euro banknotes and coins as provided in Article 3(2) of the draft law, the ECB understands that this does not prejudice the general principle of parties' contractual autonomy and would not prevent debtors and creditors to agree on discharging debts by way of non-cash money or in a currency other than the one being legal tender. As an enhancement of the draft law, the ECB recommends clarifying that Article 3(2) of the draft law does not prevent parties from agreeing on other methods for the discharge of debts. In addition, mandatory law and customary law may indicate limits to the unrestricted use of cash as means for debt settlement.

Publication of images of euro banknotes and coins and euro cent coins

16. The ECB notes that pursuant to Article 4 of the draft law, Lietuvos bankas will publish information on samples of the front side and the reverse side of euro banknotes and the common side (reverse) and the national side (obverse) of euro coins and euro cent coins with descriptions of their authentication features. The ECB welcomes this provision since it will make the Lithuanian public more familiar with euro banknotes and coins. For the sake of completeness, Lietuvos bankas could

also publish images of all of the national designs to be found on the obverse of euro coins issued by the Member States that have adopted the euro, since it is not clear from Article 4 of the draft law whether it also applies to euro coins issued by other Member States.

Exchange of litas banknotes and coins

17. Article 2(2) of the draft law, *inter alia*, defines the term ‘exchange of litas into euro’, and the exchange of litas banknotes and coins into euro banknotes and coins falls within that definition. In respect of the precise wording of that definition, the ECB recommends deleting the reference to ‘litas cent coins’. The ECB understands that both litas cent coins and litas coins fall under the general concept of ‘litas coins’. Furthermore, the ECB recommends clarifying in the definition of exchange of litas into euro that the crediting of a client’s account with a corresponding amount in euro is in consideration of the exchange of litas banknotes and coins, as otherwise this might be confused with the simple conversion of balances on bank accounts from litas into euro which will result from the introduction of the euro without any exchange of banknotes and coins necessarily taking place, as will be provided for in Community legislation.
18. The ECB welcomes the provisions of Article 5 of the draft law concerning the exchange of unlimited amounts of litas into euro free of charge by Lietuvos bankas and, for a limited period of time, by commercial banks and Lithuanian branches of foreign banks. The ECB also notes that Article 16 of Regulation (EC) No 974/98 states that the issuers of banknotes and coins of the Member States will continue to accept, against euro at the conversion rate, the banknotes and coins previously issued by them ‘in accordance with the laws or practices’ of each participating Member State. The draft law therefore now expressly clarifies that Lietuvos bankas will exchange litas banknotes and coins into euro for an unlimited period of time. The ECB understands that this conforms with the current practice applied by Lietuvos bankas and welcomes this provision as it enhances legal clarity.
19. As an additional point, the Lithuanian authorities may wish to specify in the draft law whether there should be any limit on the amount of fees to be charged by banks for exchange operations after expiry of the period during which they will be obliged to exchange litas to euro without charge.

Conversion rate and supplementary rounding rules

20. With respect to the conversion rate and the recalculation rules, Article 6 of the draft law refers to the irrevocably fixed exchange rate and the rules set out in EU legal acts. This Article further lays down rules for interim rounding of amounts on conversion from litas into euro. The ECB notes that in certain circumstances a more precise conversion of monetary amounts may be appropriate, in particular when the application of general rounding rules would result in numbers different from those expected by interested parties, e.g. consumers, as demonstrated in a recent case before the

Court of Justice¹³. Therefore, the Lithuanian authorities may consider it relevant to assess each case individually in order to determine whether interim conversion of amounts is fair and acceptable.

21. Moreover, the Lithuanian authorities may wish to specify how and by whom the ‘more precise principles of expression’ referred to in Article 6(3) of the draft law will be determined and what rules the application of these principles may require.
22. In the context of converting monetary amounts, the ECB notes that Article 6 of the draft law states that the exchange and conversion of litas into euro is based on the irrevocably fixed conversion rate and that the conversion rules laid down in Community legal acts apply. However, it appears that the provisions of the draft law referring to the conversion of monetary amounts are not uniform in all instances. For instance, Article 2(2) of the draft law states that the exchange of litas into euro is based on the irrevocably fixed conversion rate, whilst other provisions, such as Articles 7 and 8(1), refer to the conversion of monetary amounts ‘in accordance with the procedure laid down in the draft law’. Finally, Article 11(2) of the draft law refers to the conversion of prices by applying, in accordance with the procedure laid down in Article 6 of the draft law, the irrevocably fixed conversion rate. For the sake of clarity, the draft law should contain a uniform and explicit reference to Community requirements for conversion to avoid the risk of the draft law being misinterpreted with the result that Community rounding and expression rules do not apply in all circumstances.

Conversion of deposits and accounts

23. Article 7 of the draft law provides that deposits and other balances on clients’ accounts in litas will be converted into euro on the date of introduction of the euro free of charge in accordance with the procedure laid down in the draft law.
24. Whilst not legally indispensable in the light of Article 14 of Regulation (EC) No 974/98, Article 7 of the draft law supplements the Community rule to the extent that it adds a prohibition on imposing any charges for converting deposits or other balances. This conforms with the standards of good practice, as described in Article 2 of Commission Recommendation 98/286/EC of 23 April 1998 concerning banking charges for conversion to the euro¹⁴. In addition, the ECB suggests that the Lithuanian authorities could include a provision in the draft law stating that balances on all types of accounts with credit institutions and other entities are to be converted without charge.

Financial reporting and other related documents

25. Article 8(2) of the draft law states that financial, statistical and tax reporting for the periods until the date of the adoption of the euro are drawn up in litas, unless other legal acts provide otherwise. The ECB does not object to this provision of the draft law, to the extent it is in line with Community law.

¹³ Case C-19/03 *Verbraucher-Zentrale Hamburg eV v O2 (Germany) GmbH & Co. OHG* [2004] 0000.

¹⁴ OJ L 130, 1.5.1998, p. 22.

Replacement of national reference rates

26. Article 9(1) of the draft law replaces, with effect from the date of introduction of the euro, all references to VILIBOR (Vilnius Interbank Offered Rate) in legal acts, agreements, and other documents by references to EURIBOR (Euro Interbank Offered Rate). References to the VILIBOR overnight interest rate are replaced by references to EONIA (Euro Overnight Index Average). The ECB understands that VILIBOR is currently published by Lietuvos bankas pursuant to Resolution No 211 of Lietuvos bankas' Board of 10 December 1998¹⁵.
27. The ECB understands that there will be no intermediary stage during which a national substitute rate for VILIBOR will be organised. The changes proposed by the draft law are therefore welcome, since they will further the unity of the Europe-wide money market and avoid the maintenance of national reference rates. The ECB also notes that it is proposed that VILIBID (Vilnius Interbank Bid Rate), which is currently published by Lietuvos bankas, will cease to exist from 1 January 2006, as set out in Resolution No 68 of Lietuvos bankas' Board of 28 April 2005. The ECB also suggests inserting a provision in the draft law allowing parties to deviate from the rule described in this paragraph by mutual agreement.
28. Given that VILIBOR will be replaced by respective euro area reference rates, the draft law should also instruct Lietuvos bankas to stop publishing VILIBOR from the date of introduction of the euro in Lithuania (with the exception of historical data). Alternatively, the ECB expects that Lietuvos bankas will amend its Resolution No 211 of 10 December 1998 to the effect that publication of VILIBOR will cease.
29. The Lithuanian authorities should review all national legal acts with a view to verifying whether the replacement of VILIBOR with EURIBOR or EONIA, respectively will always be appropriate. For instance, Article 3(1)(d) of Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions¹⁶ explicitly requires, with regard to participating Member States, that the interest rate applied by the ECB to its main refinancing operations is used when calculating penalties for late payments.

Renominalisation of debt securities

30. Pursuant to Article 10(1) of the draft law, the nominal value of all Government securities denominated in litas will be changed by dividing, using the conversion rate, the total nominal value of securities held by each particular investor in each individual account, then multiplying it by 100 and rounding it to the last whole number in accordance with the procedure laid down in Article 6 of the draft law. Effectively, the nominal value of securities is then expressed in euro cent. The ECB welcomes the regime envisaged for the renominalisation of public debt. The method chosen,

¹⁵ *Valstybės žinios* (Lithuanian Official Bulletin), 1998, No. 112-3121, as amended by Resolution No 68 of Lietuvos bankas' Board of 28 April 2005 (*Valstybės žinios*, 2005, No. 59-2089).

¹⁶ OJ L 200, 8.8.2000, p. 35.

i.e. based on individual holdings and rounding to the euro cent, is similar to the method chosen by many Member States on the eve of the entry to the third stage of economic and monetary union.

31. As proposed in Article 10(2) of the draft law, the method described in paragraph 30 will also apply to other dematerialised debt securities, unless the issuer and the debt holders agree on a different method. It is unclear, however, whether Article 10(2) of the draft law would apply to convertible bonds.
32. The ECB notes that the draft law does not address a number of issues that other Member States have considered it appropriate to regulate in relation to the redenomination of debt securities, for example: (i) the allocation to the issuer/borrower of the costs of redenomination/renominalisation and (ii) a short limitation period for challenging redenomination/renominalisation measures.

Conversion of shares

33. Pursuant to Article 10(3) of the draft law, the nominal value of equity securities will be changed by dividing the total nominal value in litas of issued securities of the same class and nominal value by the conversion rate and the number of issued securities of that class and nominal value. In addition, Article 10(4) of the draft law prescribes that a decision on the changes to the nominal value of equity securities (exact to at least one euro cent) should be taken by the shareholders of a company in general meeting at least 30 calendar days before the date of introduction of the euro and that the shareholders should decide whether any resulting increase of authorised capital should be covered from additional contributions to the capital of the company or from company funds, and whether the difference resulting from any decrease should be transferred to the company's reserves. Article 10(5) of the draft law concerns situations in which no decision is taken by shareholders within the specified time limit and states that the nominal value of equity securities in euro calculated as described above should be corrected to two decimal places to result in a nominal value for equity securities in whole euro cent. Any difference resulting from such change should be transferred to the company's reserves.
34. In this context, the ECB notes that pursuant to Article 40(6) of the Act on enterprises¹⁷ the nominal value of a share has to be expressed in a whole number of litas without reference to cents. If the conversion rules described in paragraph 33 are applied, the nominal value of a share may be an amount other than a whole amount. The Lithuanian authorities should therefore consider amending the Act on enterprises accordingly.
35. The ECB also notes that entities other than companies operating under the Act on enterprises may be affected by the euro changeover and therefore suggests that the Lithuanian authorities should consider whether to adopt special rules concerning such entities and in particular with regard to the conversion into euro of their authorised capital, shares and other subscriptions to their capital.

¹⁷ *Valstybės žinios*, 2000, No 64-1914.

Dual display of prices

36. The dual display of prices is governed by Article 11 of the draft law which lays down the following: (i) persons engaged in the sale of goods (services) will be obliged to display prices of goods (services) in euro and in litas no later than 60 calendar days prior to the date of introduction of the euro and for 60 calendar days after the date of introduction of the euro; (ii) prices that are displayed will be calculated by applying the irrevocably fixed conversion rate in accordance with the procedure laid down in Article 6 of the draft law; (iii) prices displayed in euro and in litas should be easy to understand and should not be misleading or presented along with superfluous information.
37. Taking into account Commission Recommendation 98/287/EC of 23 April 1998 concerning dual display of prices and other monetary amounts¹⁸, it is suggested that the Lithuanian authorities could consider providing for rounding to the nearest euro cent for prices which have been converted from litas into euro and for an obligation to clearly indicate what is the unit in which the price is determined and what is the counter-value. Certain other issues, such as the display of dual prices on receipts, payslips or other financial statements, could also be considered.

Exchange of mutilated euro banknotes and coins

38. As regards the exchange of mutilated euro banknotes and coins provided for in Article 12(3) of the draft law, the ECB notes that this provision should not feature in the draft law. This matter is already regulated by Decision ECB/2003/4 of the ECB of 20 March 2003 on the denominations, specifications, reproduction, exchange and withdrawal of euro banknotes¹⁹ and, in order to ensure uniform application of this Decision and thus protect the people's confidence in euro banknotes and coins, national authorities of Member States without a derogation should refrain from implementing the Decision in national law. In addition, there is no need to mention Decision ECB/2003/4 in the Annex to the draft law which lists the Community legal acts implemented by the draft law.

Conversion of salaries, pensions and other social benefits

39. The second point of Article 15(1) of the draft law mandates the Government to prepare amendments to legal acts concerning the payment of salaries, pensions and other social benefits. The draft law provides for the rounding rules when converting amounts of salaries, pensions and other social benefits, and the ECB understands that the described method would ensure that rounding is effected in a neutral manner or in favour of recipients. However, the Lithuanian authorities should carefully review the cases in which the above amounts are used as a threshold rather than a payable amount.

¹⁸ OJ L 130, 1.5.1998, p. 26.

¹⁹ OJ L 78, 25.3.2003, p. 16.

Adjustment of certain ‘round amounts’

40. The ECB notes that the draft law does not deal with the adjustment of ‘round amounts’ such as fines, charges, taxes etc., after they have been converted into euro. An adjustment of such amounts after conversion is a prerogative of national authorities which may contribute to greater legal certainty and transparency, and increase acceptance of the single currency.

Entry into force of the draft law and repeal of certain other laws

41. As regards the entry into force of the draft law, the blank reference in Article 16(1) of the draft law may appear somewhat misleading, since various provisions of the draft law will not enter into force at the same time. For example, provisions concerning the dual display of prices will become effective prior to the introduction of the euro, while certain other provisions may only enter into force on the date of introduction of the euro in Lithuania. With respect to at least some provisions of the draft law, the Lithuanian authorities should consider providing for them to enter into force if and when the Council, acting in accordance with Article 122(2) of the Treaty, decides that Lithuania fulfils the necessary conditions for the adoption of the euro and abrogates the derogation of Lithuania or, where relevant, when such an abrogation enters into force. In addition, once these decisions are taken by the Community, the Lithuanian authorities might need some time, before the draft law becomes effective, to review the latter’s consistency with the new Community legislative framework.
42. Article 16(2) of the draft law states that a number of laws, including (but not limited to) the Act on the issuance of money, the Act on money and the Act on foreign currency in the Republic of Lithuania, are repealed from the 15th day after the date of introduction of the euro. With respect to the period starting after the date of introduction of the euro and ending on the 15th day thereafter, the aforementioned laws will apply, as stated in Article 16(2) of the draft law, insofar as they do not contradict the draft law. In the ECB’s view, Article 16(2) of the draft law should be amended to provide that the identified laws are, insofar they concern national competencies over monetary matters, repealed from the date of introduction of the euro since provisions of national law governing monetary matters may not remain in force after the introduction of the euro in Lithuania. As soon as the abrogation of the derogation becomes effective with respect to Lithuania, i.e. from the date of introduction of the euro, all monetary matters will be the competence of the Community. Provisions of national law, such as those governing the national currency, will have to be aligned with Community law or, where necessary, repealed from that date. It is important to note that national law may set out the modalities of the changeover, but only to the extent this is delegated by Community legislation or is not foreseen in and does not contradict Community legislation.
43. The ECB understands that the Litās Committee, which was established in 1991 pursuant to the Act on the issuance of money, will be dissolved on the repeal of the Act on the issuance of money and that no separate resolution for the dissolution of the Litās Committee will be passed by *Lietuvos*

Respublikos Seimas (the Parliament). However, some of the provisions of the Resolution of the Litas Committee of 14 June 1993 on the introduction of Lithuania's national money and the withdrawal of temporary money-talons from circulation, on the basis of which litas banknotes and coins of particular denominations were put into circulation, may still need to be repealed by the Litas Committee or by the Parliament. Similarly, the Lithuanian authorities may review other Lithuanian legal acts adopted on the basis of the Act on the issuance of money, such as Resolution No 461 of Lietuvos bankas' Board and the Government of 16 June 1993 on the withdrawal of the Lithuanian talons from circulation in Lithuania²⁰ which makes it mandatory to effect all payments only in litas, and Resolution No 585 of Lietuvos bankas' Board and the Government of 30 July 1993 on a prohibition on trade in foreign currency in the internal market of the Republic of Lithuania which, in addition, makes it mandatory to express all prices in litas only²¹.

44. Points 10 to 19 of Article 16(2) of the draft law repeal the Act on foreign currency in the Republic of Lithuania²², as amended (hereinafter the 'Act on foreign currency'). This act provides, in general terms, for the following: (i) that foreign and national persons may open accounts in foreign currency with credit institutions operating in Lithuania; (ii) that foreign exchange services may only be provided by licensed credit institutions; (iii) that Lietuvos bankas is empowered to establish the rules for the exchange of foreign currency; (iv) that foreign currency may be used for non-cash payments, if the parties so agree; the parties may also agree to use the euro for both cash and non-cash payments; (v) that loans granted by foreign institutions have to be registered with the Ministry of Finance (if the State guarantees their repayment) or Lietuvos bankas; and (vi) that all enterprises, institutions, organisations and credit institutions are obliged to carry out their accounting in accordance with the official litas exchange rate and the reference rates published by Lietuvos bankas.
45. With respect to the Act on foreign currency, the ECB understands that after its repeal, foreign exchange services will be provided pursuant to the Act on financial institutions²³ and that the persons entitled to provide such services will not necessarily only be credit institutions. In addition, it appears that with the repeal of the Act on foreign currency: (i) the obligation to report on the opening of accounts abroad will be governed by other Lithuanian legal acts; (ii) loans granted by foreign persons will no longer be registered; and (iii) payments in any foreign currencies will, to the extent parties consent to such payment, be allowed.
46. Article 6 of the Act on foreign currency merits special consideration. This Article states that all enterprises, institutions, organisations and credit institutions conduct their accounting in accordance with the official litas exchange rate and exchange rates between litas and foreign currencies, as published by Lietuvos bankas. While the latter provision is to be repealed on the

20 *Valstybės žinios*, 1993, No 25-587.

21 *Valstybės žinios*, 1993, No 34-790.

22 *Valstybės žinios*, 1993, No 28-640.

23 *Valstybės žinios*, 2002, No 91-3891.

adoption and entry into force of the draft law, the ECB notes that Lithuanian law currently provides for a fixed exchange rate regime. Therefore, a variety of legal acts refer to two distinct concepts: (i) the official litas exchange rate; and (ii) exchange rates between litas and foreign currencies, as published by Lietuvos bankas.

The official litas exchange rate against the anchor currency is established by Lietuvos bankas, in coordination with the Government. At the moment, the anchor currency for litas is the euro, pursuant to resolutions adopted by Lietuvos bankas and the Government²⁴. Any provisions of Lithuanian law which provide for a fixed exchange rate regime will need to be repealed upon the introduction of the euro in Lithuania in view of the Community's exclusive competence over exchange rate matters²⁵ (see, for instance, Article 111 of the Treaty).

The ECB notes that Lietuvos bankas currently publishes exchange rates for litas against major currencies. As a general remark, in view of the Community's exclusive competence over exchange rate matters and the currently existing market-based exchange rate regime in the euro area, a Eurosystem member may not individually establish or 'fix' official exchange rates for any currency against the euro with the effect that market participants would be obliged to trade at these rates. A Eurosystem member may, however, establish reference exchange rates in accordance with the Eurosystem's own criteria and methodology. Participating Member States may not impose such reference rates on parties who may agree, acting in good faith, on a different exchange rate for their transactions which could then be used for the purpose of accounting or financial reporting, for example.

Other issues

47. With regard to the application of penal provisions on the counterfeiting of banknotes and coins, the ECB notes that Article 213 of the Lithuanian Criminal Code does not make counterfeiting of banknotes and coins which have been withdrawn from circulation a criminal offence, although an attempt to exchange such counterfeits might be subject to other provisions of the Criminal Code. Nevertheless, the ECB suggests that Lithuanian criminal law should provide for protection against counterfeiting of litas banknotes and coins even after they cease to be legal tender in Lithuania, especially given the fact that Lietuvos bankas will exchange them into euro for an unlimited period of time.
48. As far as the protection of the financial system against money laundering is concerned, the ECB expects that all institutions and entities involved in the euro changeover in Lithuania will

²⁴ Resolution No 112 of Lietuvos bankas' Board of 28 June 2001 on the establishment of the base currency and the official litas exchange rate (*Valstybės žinios*, 2001, No 57-2073); Decision of the Government of 25 June 2001 (protocol No. 30-18); Resolution No 113 of Lietuvos bankas' Board of 28 June 2001 on the establishment of the official Lithuanian litas exchange rate (*Valstybės žinios*, 2001, No 57-2074); Resolution No 15 of Lietuvos bankas' Board of 1 February 2002 on the base currency and the official litas exchange rate (*Valstybės žinios*, 2002, No 12-453); Resolution No 157 of the Government of 1 February 2002 on the endorsement of the proposal of Lietuvos bankas concerning the base currency and the official litas exchange rate and the repeal of resolutions of the Government (*Valstybės žinios*, 2002, No 12-417).

²⁵ Opinion of the ECB of 4 November 2004 at the request of the Belgian Ministry of Finance on a draft law introducing a tax on exchange operations involving foreign exchange, banknotes and currency (CON/2004/34).

vigorously enforce all measures necessary to prevent money laundering. As a specific comment, the ECB notes that the Act on the prevention of money laundering²⁶ only applies to operations involving banknotes and coins which are legal tender (cf. the definition of ‘money’ in Article 2(7) of the Act). There is resulting uncertainty as to whether the requirements of the Act on prevention of money laundering apply to the exchange of non legal tender banknotes and coins and in particular to the acceptance of such non legal tender banknotes and coins by financial institutions and other entities. The Lithuanian authorities should therefore consider what action is needed in order to remove this uncertainty. In addition, the ECB notes that it is not clear whether Lietuvos bankas is itself obliged under the Act on the prevention of money laundering to report suspicious financial or other operations to relevant national authorities. The Lithuanian authorities could consider inserting such an explicit obligation into the Act on the prevention of money laundering, especially taking into account that the draft law will impose an obligation on Lietuvos bankas to exchange unlimited amounts of litas, be it legal tender or not, into euro for an unlimited period of time.

49. Regarding the obligations of economic agents in relation to the preparation of automatic vending machines in anticipation of the euro changeover, the draft law could provide for specific rules. As the draft law stands now, it appears that the entire non-banking community will be obliged to accept both litas and the euro as legal tender during the dual circulation period which may pose practical difficulties, especially if the conversion of litas amounts into euro results in uneven figures.
50. Certain provisions of the draft law, such as Articles 2(2), 3(2) and 4, refer to ‘euro cent coins’. The ECB understands that both euro cent coins and euro coins fall under the general concept of ‘euro coins’ and therefore a specific reference to euro cent coins is unnecessary.
51. This opinion will be published on the ECB’s website.

Done at Frankfurt am Main, 14 June 2005.

[signed]

The President of the ECB

Jean-Claude TRICHET

²⁶ *Valstybės žinios*, 1997, No 64-1502.