



OPINION OF THE EUROPEAN CENTRAL BANK

of 18 May 2010

on the legal status of Lietuvos bankas's assets, terms of office and remuneration of Board members, immunity of foreign reserves of foreign central banks and annual financial statements of Lietuvos bankas

(CON/2010/42)

Introduction and legal basis

On 12 April 2010 the European Central Bank (ECB) received a request from the Lithuanian Ministry of Finance for an opinion on a draft law amending and supplementing Articles 1, 10, 17, 35 and 49 of 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 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 provisions¹, 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

The aim of the draft law is to: (a) specify the legal status of Lietuvos bankas's assets; (b) reduce the terms of office of the Board members of Lietuvos bankas (with the exception of the Chairman of the Board) from nine to six years; (c) amend and specify the remuneration of the Chairman and other Board members; (d) provide for not only the Deputy Chairmen but also other Board members to deputise for the Chairman of the Board; (e) allow other Board members to participate in the meetings of the Government in an advisory capacity; (f) provide explicitly for immunity from appropriation by third parties of foreign reserves of foreign central banks held in Lietuvos bankas; and (g) ensure that the use of the term 'annual financial statements' in the Law on Lietuvos bankas is in line with other national legislation.

2. Legal status of Lietuvos bankas's assets

2.1 The ECB is aware of and concerned about the unclear legal status of Lietuvos bankas's assets. The primary legal registration of Lietuvos bankas's real property, after the restoration of the

¹ OJ L 189, 3.7.1998, p. 42.

independence of Lithuania, confirmed Lietuvos bankas's ownership of its real property². However, the ECB understands that, after a unilateral change of the data in the State Real Property Cadastre and Register, the Lithuanian State is currently considered to be the legal owner of Lietuvos bankas's real property and that there is a risk that Lietuvos bankas would only be able to dispose of its property with the approval of government authorities. This situation undermines both the institutional and the financial independence of Lietuvos bankas. Instructions from the state authorities to Lietuvos bankas or intervention by such authorities with regard to the assets held by Lietuvos bankas would be contrary to the principle of Lietuvos bankas's institutional independence. Lietuvos bankas's financial independence would also be undermined, since it would no longer be entirely free to decide on the allocation of its resources, and it could be unable to secure sufficient means for the performance of its tasks.

- 2.2 Under the current legal situation, it is unclear whether Lietuvos bankas could independently sell its real property and keep the proceeds from such sale. If Lietuvos bankas could not keep the proceeds, this would raise doubts as to whether the current legislation is compatible with the monetary financing prohibition laid down in Article 123(1) of the Treaty and supplemented by 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 Treaty³.
- 2.3 The ECB understands that this problem has arisen because no national law explicitly specifies whether Lietuvos bankas has the right to own the assets, or whether Lietuvos bankas can only manage and hold such assets on trust. However, the ECB also understands that Lietuvos bankas has historically included these assets in its annual financial statements.
- 2.4 Therefore, the ECB welcomes the fact that it is explicitly specified in the Law on Lietuvos bankas that Lietuvos bankas legally owns the assets belonging to it, ensuring that the legal title and economic control of the assets will rest with the Lietuvos bankas.
- 2.5 The ECB would also welcome such specification of the legal status of Lietuvos bankas's assets being applied by virtue of the law, i.e. without an additional requirement for Lietuvos bankas to apply to administrative authorities with regard to the change in the legal status of its real property, as provided for in Article 6 of the draft law. Otherwise, this requirement raises concerns about the institutional independence of Lietuvos bankas.

3. Terms of office of Board members

- 3.1 As noted in the ECB's Convergence Report of May 2008⁴, when statutes of a national central bank (NCB) are amended, the amending law should safeguard the security of tenure of the Governor and of other members of decision-making bodies who may have to deputise for the Governor. The Treaty and the Statute of the European System of Central Banks and of the European Central Bank

² The first paragraph of point 2 of the Explanatory memorandum to the draft law.

³ OJ L 332, 31.12.1993, p. 1.

⁴ ECB Convergence Report of May 2008, p. 19.

(hereinafter the ‘Statute of the ESCB’) require such security of tenure. Article 14.2 of the Statute of the ESCB does not restrict the security of tenure of office to Governors, while Article 130 of the Treaty and Article 7 of the Statute of the ESCB refer to ‘members of the decision-making bodies’ of NCBs, rather than to Governors specifically⁵.

- 3.2 The change in the length of the terms of office of Board members should not affect the length of the terms of office of the current members and the new provisions should only apply to future terms. In order to protect the personal independence of current Board members, the draft law should specifically provide that the reduction of the term of office only applies to future appointments of Board members, and that the current members will carry out their duties until the expiry of their full terms of office.

4. Remuneration of Board members

- 4.1 As noted in the Convergence Report of May 2008 under the heading ‘Autonomy in staff matters’, Member States may not impair an NCB’s ability to employ and retain the qualified staff necessary for the NCB to perform independently the tasks conferred on it by the Treaty and the Statute of the ESCB. In addition, an NCB may not be put into a position where it has limited or no control over its staff, or where the government of a Member State is in a position to influence the NCB’s policy on staff matters⁶. This point, which is derived from the concept of financial independence, has been stressed by the ECB in several recent opinions on matters concerning national central bank staff⁷. In its opinion on draft Italian legislation on the overall remuneration of NCB staff, the ECB also pointed out ‘that the ECB defines autonomously its staff’s conditions of employment and that this autonomy forms part of the ECB’s independence as guaranteed by Article 108 [now Article 130] of the Treaty and Article 36 of the Statute [of the ESCB]’⁸.
- 4.2 According to the current Article 10(7) of the Law on Lietuvos bankas, the Board of Lietuvos bankas decides the salaries of the Deputy Chairmen and Board members, taking into account the salary of the Chairman of the Board. The ECB notes that, according to the proposed amendment, the salaries of the Deputy Chairmen and Board members can not exceed 90 percent of the salary of the Chairman of the Board. The ECB also notes that the draft law proposes reducing the salary of the Chairman of the Board.
- 4.3 In order to protect Lietuvos bankas’s autonomy in staff matters, which is an aspect of the principle of central bank independence under Article 130 of the Treaty, the Lithuanian authorities have an obligation to ensure that any amendment to the legislative provisions on the determination of the

⁵ ECB Convergence Report of May 2008, p. 19.

⁶ ECB Convergence Report of May 2008, p. 22.

⁷ See, e.g., paragraph 2.2 of Opinion CON/2009/47, paragraph 2.2 of Opinion CON/2009/15 and paragraph 2.2 of Opinion CON/2008/9.

⁸ See paragraph 3.2.2 of Opinion CON/2008/10.

remuneration of Board members (including the Chairman) of Lietuvos bankas is decided in cooperation with Lietuvos bankas, taking due account of the views of Lietuvos bankas⁹.

- 4.4 In addition, any amendment to the remuneration of Board members (including the Chairman) should not affect the terms under which the current Board members (including the Chairman) have been appointed and should only apply to future appointments¹⁰.

5. Immunity of foreign reserves of foreign central banks

The ECB welcomes the draft law provisions which explicitly protect the foreign reserves owned by foreign central banks and held in the accounts opened with Lietuvos bankas from appropriation by third parties, both judicial and extra-judicial, thereby ensuring greater legal certainty.

6. Harmonisation of the term ‘annual financial statements’

- 6.1 The consulting authority has noted¹¹ that the amendment of Article 49 of the Law on Lietuvos bankas is editorial in nature, and is aimed at ensuring harmonisation of the use of the term ‘annual financial statements’ in the Law on Lietuvos bankas with other national legislation.
- 6.2 However, in the Law on Lietuvos bankas it should remain clear that the annual financial statements of Lietuvos bankas consist only of a balance-sheet, a profit and loss statement and explanatory notes (as specified in the current version of the Law), and that the proposed new wording should leave no room for ambiguity as regards the content of the annual financial statements.

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

Done at Frankfurt am Main, 18 May 2010.

[signed]

The President of the ECB
Jean-Claude TRICHET

⁹ Also see paragraph 3 of CON/2009/47.

¹⁰ See paragraph 3.2.2 of CON/2008/10.

¹¹ Fifth paragraph of point 2 of the Explanatory memorandum to the draft law.