



OPINION OF THE EUROPEAN CENTRAL BANK
of 30 May 2011
on financial market supervisory reform in Lithuania
(CON/2011/46)

Introduction and legal basis

On 20 April 2011, the European Central Bank (ECB) received a request from the Lithuanian Ministry of Finance for an opinion on a draft law on reform of financial market supervision (hereinafter the ‘draft reform law’) and on draft amendments to the Law on Lietuvos bankas (hereinafter the ‘draft amending law’) (jointly the ‘draft laws’).

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, fifth and sixth 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 laws relate to Lietuvos bankas, payment and settlement systems, and rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. In addition, the ESCB contributes to the smooth conduct of policies relating to the prudential supervision of credit institutions and the stability of the financial system under Article 127(5) of the Treaty. 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 main purpose of the draft laws is to establish a legal framework for integrated supervision of the Lithuanian financial market by the sole authority Lietuvos bankas. Currently, Lietuvos bankas is one of three financial market supervisors in Lithuania and supervises credit institutions. The other financial market supervisors are the Securities Commission, responsible for prudential supervision and the conduct of business in capital markets, and the Insurance Supervision Commission, responsible for prudential supervision and the conduct of business in insurance markets (hereinafter referred to collectively as the ‘other supervisors’).
- 1.2 On 31 December 2011, the other supervisors will be dissolved and their functions will be transferred to Lietuvos bankas. Hence, Lietuvos bankas’ responsibilities will be extended to the supervision of capital and insurance markets. The draft amending law confers on Lietuvos bankas the task of contributing to the maintenance of the stability and credibility of the financial system. The Government will assume the liabilities of the other supervisors.

¹ OJ L 189, 3.7.1998, p. 42.

- 1.3 According to the draft laws, contributions by financial market participants and by Lietuvos bankas' other funds will finance supervision of the entire financial market. Currently, market participants and the State budget finance supervision of the capital and insurance markets.
- 1.4 In addition, according to the draft amending law, Lietuvos bankas will be entrusted with consumer protection. A new non-judicial dispute settlement mechanism for disputes between consumers of financial services and financial market participants will be introduced on 1 January 2012, in which Lietuvos bankas will play a major role. Currently, the Insurance Supervision Commission resolves consumer disputes in the insurance market, while the State Consumer Rights Protection Authority settles consumer disputes in capital and credit institutions' markets.
- 1.5 In addition to the financial market supervisory reform, the draft amending law also transposes some Union legislation.
- 1.5.1 In accordance with Council Regulation (EC) No 45/2009 of 18 December 2008 amending Regulation (EC) No 1339/2001 extending the effects of Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting to those Member States which have not adopted the euro as their single currency², Lietuvos bankas is to be entrusted with ensuring that credit and payment institutions and other professional cash handlers check cash for authenticity and ensure that counterfeits are detected.
- 1.5.2 In transposing Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC³, Lietuvos bankas is to be entrusted with supervising electronic money institutions.

2. General observations

- 2.1 The ECB understands that Lietuvos bankas, the Ministry of Finance and other supervisors⁴ were involved in the drafting of the draft laws and that the Lithuanian Government also supports reform of financial market supervision⁵. The ECB welcomes the proposal to integrate financial market supervision within Lietuvos bankas. In a Member State with a relatively small financial market, such as Lithuania, there are strong arguments for concentrating supervisory responsibilities in a single authority⁶.
- 2.2 The ECB considers that the proposed extension of Lietuvos bankas' supervisory tasks to non-banking supervision is compatible with its European System of Central Banks (ESCB) tasks. In particular, the ECB welcomes the transfer of prudential supervision of all financial market

² OJ L 17, 22.1.2009, p. 4.

³ OJ L 267, 10.10.2009, p. 7.

⁴ See the explanatory memorandum to the draft laws.

⁵ Resolution of the Government No 580 of 19 May 2010 approving the joining of authorities supervising the financial market, *Valstybės žinios*, 27.5.2010, No 61-2991.

⁶ See also Opinion CON/2005/39, paragraph 4. All ECB opinions are published on the ECB's website www.ecb.europa.eu.

intermediaries to Lietuvos bankas. Faced with the increasing blurring of traditional borders between the banking, securities and insurance sectors and the resulting new challenges to prudential supervision and the stability of the financial system, a national central bank (NCB) with overall responsibility for the financial markets is likely to cope better than several supervisors whose supervisory competences are limited to a particular financial sector⁷.

- 2.3 It is important that the financial market supervisory reform is implemented in a manner which fully takes into account the internationally agreed principles of operational independence and sound governance of supervision⁸.

3. Specific observations

3.1 *Lietuvos bankas' contribution to the maintenance of the stability and credibility of the financial system*

3.1.1 The draft amending law provides that Lietuvos bankas will contribute to the maintenance of the stability and credibility of the entire financial system. However, this aim is confined to the supervision of the financial market⁹. The ECB would welcome the express recognition in the draft amending law, as in the statutes of other Member States' NCBs, that Lietuvos bankas has the wider task of contributing to the stability of the financial system as a whole¹⁰, for example, by inserting this task in the particular articles of the Law on Lietuvos bankas that list Lietuvos bankas' functions¹¹, without prejudice to any oversight competence exercised in relation to financial market infrastructures by Lietuvos bankas.

3.1.2 While the entire legislative package of financial market supervisory reform consists of 38 legal acts, the ECB was consulted on two draft legal acts only. The ECB understands that the exact scope of Lietuvos bankas' supervision is to be defined in amendments to the Lithuanian sectoral financial market legal acts, on which the ECB have not been consulted. In setting the exact scope of Lietuvos bankas' regulatory powers, the ECB invites the consulting authority to take into account this Opinion and ECB convergence reports¹², especially as regards central bank independence.

3.1.3 The draft reform law provides that the Government will adopt acts implementing the draft reform law¹³. The ECB notes that any such implementing acts should be adopted in consultation with Lietuvos bankas and may not interfere with Lietuvos bankas' own regulatory and oversight powers defined in the draft amending law.

⁷ See also Opinion CON/2005/39, paragraph 5.

⁸ See also Opinion CON/2011/37, paragraph 3.1.

⁹ Draft amending law (proposed draft Article 42(1) of the Law on Lietuvos bankas ('Aim, Functions and Rights of Lietuvos bankas in the performance of the financial market supervision')).

¹⁰ See also Opinion CON/2005/39, paragraph 6.

¹¹ For example, Article 7 ('main task of Lietuvos bankas') or Article 8 ('Lietuvos bankas's functions and activities') of the Law on Lietuvos bankas.

¹² For example, pp. 15 to 29 of Convergence Report, May 2010, available on the ECB's website at www.ecb.europa.eu.

¹³ Article 7(1) of the draft reform law.

3.2 *Central bank independence and the monetary financing prohibition*

- 3.2.1 Generally, as regards the financing of the tasks transferred to Lietuvos bankas, the ECB refers to the principle of financial independence under which an NCB must have sufficient means to perform its ESCB-related tasks and national tasks¹⁴. The tasks transferred to Lietuvos bankas should not affect its ability to carry out its ESCB-related tasks from an operational and financial point of view.
- 3.2.2 In particular, the ECB notes that the draft amending law provides that the supervisory tasks transferred to Lietuvos bankas will be financed by contributions from the supervised institutions and by Lietuvos bankas' other funds¹⁵. The principle of financial independence requires adequate financing of the tasks transferred to Lietuvos bankas by contributions from supervised institutions and that their exercise will not result in any loss for Lietuvos bankas¹⁶. The ECB understands that the concrete terms for financing Lietuvos bankas' supervisory tasks from 1 January 2012 will be laid down by Lietuvos bankas separately¹⁷ and will comply with the principle of Lietuvos bankas' financial independence. In particular, it is important to ensure that Lietuvos bankas defines these contributions independently.
- 3.2.3 Since the provisions under which an NCB becomes the legal successor to any liabilities of a distinct supervisory authority may raise issues of financial independence and compliance with the prohibition of monetary financing laid down in Article 123(1) of the Treaty¹⁸, read in conjunction with Regulation (EC) No 3603/93, the ECB welcomes the provision in the draft reform law¹⁹, according to which the Government will assume the liabilities of the other supervisors after their dissolution. Such liabilities would include, for example, the payment of any compensation²⁰ resulting from any pending or future legal proceedings challenging the actions of these supervisors after the transfer of tasks to Lietuvos bankas.
- 3.2.4 The ECB welcomes the provision on transfer of the 'assets' of the other supervisors to Lietuvos bankas²¹. However, legal certainty would be enhanced if the draft reform law would expressly provide the exact scope of these assets, since none of the draft laws provides for the destiny of the financial and human resources of these supervisors.
- 3.2.5 In this context, the ECB is particularly concerned about the transitional period since without any provision for the financial and human resources of the other supervisors, it may not be feasible for Lietuvos bankas to ensure the continuity of efficient supervision of the entire financial market from 1 January 2012. Continuity of supervision is necessary to ensure financial stability and it is essential that there is no lack of supervision for any time due to the reorganisation of the supervision structure. The ECB understands that a Commission of representatives from Lietuvos

14 See the ECB's Convergence Report, May 2010, p. 21, and notably Opinion CON/2009/93, paragraph 3.1.5.

15 Draft amending law (proposed draft Article 44(1) of the Law on Lietuvos bankas).

16 See for example Opinion CON/2011/5, paragraph 3.3.

17 Draft amending law (proposed draft Article 44(2) of the Law on Lietuvos bankas).

18 Opinion CON/2010/33, paragraph 3.2.3.

19 Article 6(4) of the draft reform law.

20 Article 6(3) of the draft reform law.

21 Article 5(2) of the draft reform law.

bankas, other supervisors and the Ministry of Finance will be established ‘to ensure the proper supervision of the financial market following 31 December 2011’²². However, the main issues arising as a consequence of the transfer of new tasks to Lietuvos bankas, such as its governance structure and the human and financial resources necessary to carry out these tasks, should be addressed in the draft laws. In general, Lietuvos bankas should dispose of sufficient human resources, both in terms of quantity and quality, to perform all its tasks efficiently.

3.3 *Cooperation with other authorities*

3.3.1 The draft amending law also provides that Lietuvos bankas may conclude agreements with the financial market supervisors of other countries to cooperate in financial markets²³. The ECB recommends broadening the wording of this provision so that Lietuvos bankas may conclude agreements with all relevant foreign authorities, including other central banks and national and European supervisory authorities, such as the European Banking Authority. Such cooperation needs to be accompanied by appropriate protection measures to safeguard confidentiality.

3.3.2 The ECB recommends expanding the scope of this provision to ensure that the draft amending law allows for confidential data to be communicated to the ECB, not only in its capacity as a monetary authority, but also for the performance of the ESCB tasks in accordance with Article 127 of the Treaty. Access to prudential information and cooperation with financial supervisory authorities is essential for macro-prudential monitoring which, in turn, is indispensable for the smooth conduct of monetary policy and helpful in reducing the reporting burden imposed on institutions²⁴.

The recent financial crisis has shown that, from a financial stability perspective, the ECB needs to be involved in the event of any financial market crisis and in that context, the availability of relevant information and the ability to interpret it are crucial²⁵.

3.4 *Lietuvos bankas' consumer protection role*

3.4.1 Consumer protection²⁶ is not included in the NCB tasks specified in the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ‘Statute of the ESCB’). However, as pointed out on previous occasions²⁷, the ECB does not consider that this task would interfere with the ESCB’s objectives and tasks.

3.4.2 Pursuant to the last sentence of Article 14.4 of the Statute of the ESCB, this task would have to be performed under the responsibility and liability of Lietuvos bankas, and would not be regarded as being part of the ESCB’s functions.

3.4.3 The ECB understands that this task has been allocated to Lietuvos bankas due to its overall responsibility for supervision of the entire financial market. In this context, the ECB considers that

22 Article 8(2) of the draft reform law.

23 Draft amending law (proposed draft Article 46 of the Law on Lietuvos bankas).

24 See Opinion CON/2011/5, paragraph 3.10.

25 See Opinion CON/2011/5, paragraph 3.10.

26 Draft amending law (proposed draft Article 45 of the Law on Lietuvos bankas).

27 See for example Opinions CON/2006/47, CON/2006/38, CON/2007/8 and CON/2007/29.

it may complement Lietuvos bankas' supervisory powers and thus contribute to the soundness of the financial market and preservation of confidence in the market.

3.4.4 The ECB notes the allocation of new powers to Lietuvos bankas with the aim of ensuring the transparency of transactions for financial services and products offered by entities subject to its supervision; this could improve the clarity and efficiency of the national regulatory framework while ensuring adequate consumer protection and a level playing field. Prudential supervision and investor/consumer protection are intended to safeguard the soundness of the financial market and preserve confidence in the marketplace.

3.4.5 However, as previously stated by the ECB in relation to other NCBs, it is important to ensure that prudential supervision and investor/consumer protection have adequate and equal emphasis and that appropriate resources are available to ensure their performance²⁸.

3.4.6 The ECB therefore expects that, when granting these additional powers to Lietuvos bankas, care will be taken to ensure that Lietuvos bankas' operational capacity to carry out ESCB-related tasks will not be affected.

3.5 *Protection of cash against counterfeiting and supervision of electronic money institutions*

3.5.1 Under the draft amending law, Lietuvos bankas will be entrusted with the supervision of the protection of cash against counterfeiting and the supervision of electronic money institutions. Subject to the observations below, the ECB welcomes this widening of powers provided it is supported by sufficient human and financial resources, both in terms of quantity and quality, to avoid affecting Lietuvos bankas' capacity to carry out ESCB-related tasks²⁹.

3.5.2 As regards the new Lietuvos bankas' task in supervising the protection of cash, the ECB notes that Article 1 of Regulation (EC) No 45/2009 extended the application of Articles 1 to 11 of Regulation (EC) No 1338/2001³⁰ to those Member States that have not adopted the euro as their single currency. The ECB understands that Lietuvos bankas will be responsible for ensuring that the entities engaged in the processing and distribution to the public of euro notes and coins are discharging their obligations under Article 6(1) of Regulation (EC) No 1338/2001.

3.5.3 In this context, the ECB notes that the list of entities subject to Article 6(1) of Regulation (EC) No 1338/2001 encompasses more than 'credit and payment institutions and other professional cash handlers'³¹. The ECB recommends aligning the national law with Article 6(1) of Regulation (EC) No 1338/2001.

3.5.4 Since Regulation (EC) No 1338/2001 is intended to protect the euro and not cash in general, the ECB recommends a corresponding clarification in the draft amending law in this regard.

28 See Opinions CON/2006/47, CON/2006/38, CON/2007/8 and CON/2007/29.

29 See also Opinions CON/2009/27 and CON/2009/40.

30 Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting (OJ L 181, 4.7.2001, p. 6).

31 Draft amending law (proposed draft Article 6(3) of the Law on Lietuvos bankas).

3.5.5 Finally, the ECB notes that the new competence conferred upon Lietuvos bankas regarding the protection of the euro against counterfeiting converges to some extent, as regards euro banknotes, with the Eurosystem legal framework on the verification of the authenticity of euro banknotes³². The ECB is confident that this will facilitate the convergence of the national legislative framework necessary for Lithuania's preparations for full participation in economic and monetary union.

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

Done at Frankfurt am Main, 30 May 2011.

[signed]

The President of the ECB

Jean-Claude TRICHET

³² Decision ECB/2010/14 of 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes (OJ L 267, 9.10.2010, p. 1).