



OPINION OF THE EUROPEAN CENTRAL BANK

of 11 December 2012

on the implementation of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union

(CON/2012/105)

Introduction and legal basis

On 9 November 2012, the European Central Bank (ECB) received a request from the Lithuanian Ministry of Finance for an opinion on a draft constitutional law on the sustainability of general government sector finances (hereinafter the ‘draft constitutional law’) and the draft law amending the Law on Lietuvos bankas (hereinafter the ‘draft amending law’) (collectively referred to as the ‘draft legislation’).

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 (TFEU) 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 legislation 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 legislation

1.1 The draft legislation aims to implement certain provisions of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG)² to strengthen fiscal discipline by (a) establishing a ‘balanced budget rule’ and an automatic correction mechanism, and (b) introducing a stricter surveillance mechanism, which includes the designation of Lietuvos bankas as an institution responsible at national level for monitoring compliance with the balanced budget rule.

1.2 The draft constitutional law sets a medium-term objective of ensuring that the general government sector finances are in surplus, balanced or close to balance³.

1.2.1 It aims to achieve this objective by improving the structural balance of the general government

¹ OJ L 189, 3.7.1998, p. 42.

² The TSCG was signed by 25 Member States on 2 March 2012 and will come into force on 1 January 2013, provided that twelve euro area Member States have deposited their instrument of ratification, or on the first day of the month following the deposit of the twelfth instrument of ratification by a euro area Member State, whichever is earlier <http://european-council.europa.eu/eurozone-governance/treaty-on-stability>. The Lithuanian Parliament ratified the TSCG on 28 June 2012 and deposited the ratification instrument with the Council of the European Union on 6 September 2012.

³ This implements Article 3(1)(a) of the TSCG.

sector in the medium-term.

- 1.2.2 The draft constitutional law sets two ratios for assessing the management of the structural balance of the general government sector: the planned structural target, and the minimum executive target. Non-implementation of these ratios is intended to trigger automatic corrective measures.
- 1.2.3 The draft constitutional law provides for several escape clauses. For example, ‘the obligation under the TSCG’ does not have to be fulfilled and the automatic corrective measures will not be triggered if the expected public sector deficit is higher than 3% of GDP or if one of the following exceptional circumstances occurs: (a) actual production is or will be below the potential production for at least two consecutive calendar years ; (b) the GDP chain volume for the current quarter of the calendar year has continued to decrease, as compared to the respective quarter of the preceding calendar year, or (c) the GDP chain volume for the current calendar year will continue to decrease, as compared to the preceding year.
- 1.3 The draft legislation designates Lietuvos bankas as the institution responsible for budget policy control at national level. Its main task is to strengthen the implementation and transparency of the correction mechanisms. This includes: (a) monitoring the preparation and implementation of the planned structural target; (b) assessing and making public communications about whether the planned structural target or the minimum executive target will be reached; (c) approving the expected economic developments scenario prepared by the Ministry of Finance; (d) delivering an opinion to the Parliament on whether the planned budgetary policy is appropriate to achieve the planned structural target.

2. General observations

- 2.1 The ECB welcomes the consulting authority’s initiative and the objective of implementing the TSCG. This is particularly important for Lithuania, since it has been subject to the excessive deficit procedure since July 2009 in order to bring the government deficit below 3% of GDP, and the deadline for correction of the deficit has been extended to 2012. In addition, with a view to the introduction of the euro in Lithuania, it is important that the fiscal framework contributes to the prevention of renewed macroeconomic imbalances.
- 2.2 As regards the methodology for the national implementation of the TSCG, the ECB draws the consulting authority’s attention to the guidance provided by the European Commission and the Council, in particular, the Common principles on national fiscal correction mechanisms (hereinafter the ‘common principles’)⁴ and the Specifications on the implementation of the Stability

⁴ Communication from the Commission: Common principles on national fiscal correction mechanisms (COM(2012) 342 final, 20 June 2012). Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0342:FIN:EN:PDF>

and Growth Pact and Guidelines on the formal and content of Stability and Convergence Programmes⁵.

The ECB also notes that the European Commission will present a report on the national provisions implementing the TSCG provisions adopted by the Member States which have signed and ratified the TSCG⁶ and will have the competence to assess compliance with Article 3(2) of the TSCG.

- 2.3 Article 14(5) of the TSCG provides Lithuania as a Member State with a derogation with the opportunity to declare its intention to be bound by all or part of the provisions in Titles III (Fiscal Compact) and IV (Economic Policy Coordination and Convergence) of the TSCG⁷ at an earlier date than that when the abrogation of the derogation in accordance with Article 140(2) of the TFEU takes effect. The ECB notes that, the draft legislation will only enter into force as from the date when the abrogation of the derogation takes effect, i.e. once the euro is introduced in Lithuania.

3. Specific observations

The ECB notes several issues with regard to the draft legislation.

- 3.1 The concepts and definitions used in the draft constitutional law should be fully consistent with existing Union legislation (such as the TSCG and the Stability and Growth Pact⁸).
- 3.1.1 Both definitions of ‘general government balance indicator’ and ‘general government sector debt’ in the draft constitutional law should refer to Council Regulation (EC) No 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community⁹. In addition, the European Commission (Eurostat) validates and publishes deficit (surplus) and debt data for the general government sector pursuant to the excessive deficit procedure definition.
- 3.1.2 Article 4 of the draft constitutional law contains concepts of ‘agreed bias’, ‘minimum executive target’, ‘planned structural target’ and ‘structural investment’, which are not contained in the TSCG. The draft legislation must be fully compatible with the concepts and methodology used in the TSCG and the existing Stability and Growth Pact legislation.
- 3.2 The escape clauses provided for in Articles 3(3), 5(4), 6(2), and 7(3) of the draft constitutional law are broader than those in the TSCG. The ECB underlines that, in line with the common principles¹⁰, escape clauses should be based on Union agreed notions, in order to promote consistency and avoid

⁵ Code of conduct: Specifications on the implementation of the Stability and Growth Pact and Guidelines on the format and content of Stability and Convergence Programmes (3 September 2012). Available at: http://ec.europa.eu/economy_finance/economic_governance/sgp/pdf/coc/code_of_conduct_en.pdf

⁶ Article 8(1) of the TSCG.

⁷ Titles III (Fiscal Compact) and IV (Economic Policy Coordination and Convergence).

⁸ The Stability and Growth Pact is enshrined in two main Council Regulations: (1) the ‘preventive arm’, Council Regulation (EC) No 1466/97 of 7 July on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies (OJ L 209, 2.8.1997, p. 1); and (2) the ‘corrective arm’, Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure (OJ L 209, 2.8.1997, p. 6).

⁹ OJ L 145, 10.6.2009, p. 1.

¹⁰ Principle 6 (escape clauses).

overly permissive definitions of exceptional circumstances. The suspension of the correction mechanism should be limited in time, and a minimum pace of adjustment should follow the exit from the escape clause.

- 3.3 The ‘unjustified failure of execution of the minimum executive target’¹¹ lacks sufficient automatic follow-up. The Prime Minister’s oral presentation in the Lithuanian Parliament on the reasons to justify such failure of execution and on the guidelines for avoidance of such circumstances is insufficient in this regard.
- 3.4 Article 11 of the draft constitutional law needs to be clarified in order to ensure that the method for calculating the cyclical position of the economy is consistent with the official method used in the European semester for economic policy coordination¹².
- 3.5 The draft constitutional law is complex and would benefit from greater clarity, which could be achieved by following more closely the provisions of the TSCG. The ‘implementing legal act’ as referred to in Article 11 of the draft constitutional law is a more appropriate legal instrument for addressing not only the methodology for the calculation of the multi-annual growth average, but also other issues of a technical nature, including a number of formulas, currently present in the draft constitutional law. In using this instrument, the national legislator will also be able to take into account any future technical developments at European level by incorporating these in the implementing legal act.

4. Lietuvos bankas’ role

- 4.1 Lietuvos bankas’ conclusions as regards the implementation of the planned structural target and the minimum executive target will be crucial for activating corrective measures, i.e. amendments to the budgetary laws relating to the current year or upcoming years.
- 4.2 Lietuvos bankas will also assess and approve the expected economic developments scenario prepared by the Ministry of Finance and will consider whether the planned budgetary policy is appropriate to reach the planned structural target.
- 4.3 The ECB understands that Lietuvos bankas’ role as ‘budget policy control institution’ is intended to implement the role of the institution responsible in Lithuania for monitoring compliance with the rules set out in Article 3(1) of the TSCG. In this respect, Lietuvos bankas’ role, as specified in the draft legislation, should not go beyond the role of a monitoring institution¹³. The provisions of the draft constitutional law, which contain the obligation on Lietuvos bankas to approve the expected economic developments scenario prepared by the Ministry of Finance, raise particular concern in this respect. Ensuring compliance with the obligations under Article 3(1) of the TSCG is the responsibility of the Lithuanian government.

¹¹ Article 9 of the draft constitutional law.

¹² Article 2a of Regulation (EC) No 1466/97.

¹³ See also principle 7 (the role and independence of monitoring institutions) of the common principles.

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In addition, the powers of Lietuvos bankas under the draft constitutional law and the draft amending law should be aligned to avoid any inconsistencies between the two draft laws.

- 4.4 The ECB also notes that any involvement of Lietuvos bankas in the application of the balanced budget rule must ensure that these functions will not affect Lietuvos bankas' ability to carry out its ESCB-related tasks from an operational and financial point of view. Financial independence, which is an element of the central bank independence referred to in Article 130 of the Treaty, requires an NCB to have sufficient means not only to perform its ESCB-related tasks but also its national tasks (e.g. financing its administration and own operations)¹⁴.

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

Done at Frankfurt am Main, 11 December 2012.

[signed]

The President of the ECB

Mario DRAGHI

¹⁴ See the ECB's Convergence Report, 2012, p. 25.