



OPINION OF THE EUROPEAN CENTRAL BANK

of 2 April 2014

on crisis management

(CON/2014/24)

Introduction and legal basis

On 26 February 2014, the European Central Bank (ECB) received a request from the Office of the Lithuanian Government for an opinion on a draft law on crisis management (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/EC¹, 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 draft law establishes a general legal framework for crisis management in Lithuania. In particular, the draft law (a) defines the aims and objectives of crisis prevention and management, (b) lists the entities involved in crisis management, their respective competence and arrangements for cooperation, and (c) provides for international cooperation with the Union and the North Atlantic Treaty Organisation in the field of crisis prevention and management.
- 1.2 The draft law defines ‘crisis’ very broadly as ‘any situation threatening the national security and caused by a national or international event or process, the prevention of potential, or elimination of actual effects of which necessitates recourse to crisis management measures’. It therefore covers situations which go beyond the competence of a single national institution and require coordinated action. According to the draft law, it is for the Lithuanian government to announce and revoke a state of crisis, and to decide which crisis management measures should be applied.
- 1.3 The draft law also designates Lietuvos bankas as one of the institutions responsible, ‘within its remit’, for the prevention and management of crises.

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. General observations

- 2.1 Under the Treaty, exclusive competence for monetary policy is conferred on the Union for Member States whose currency is the euro² and such Member States may not adopt unilateral measures in this field. Therefore, in adopting the euro a Member State irreversibly transfers to the Union monetary policy and other powers enumerated in the Treaty and the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ‘Statute of the ESCB’) with regard to ESCB tasks. In these fields (i.e. setting reference rates, injecting or withdrawing liquidity in the market, ensuring efficient and sound clearing and payment systems, managing foreign reserves, issuing banknotes, contributing to the stability of the financial system), certain policy-making and legislative powers belong exclusively, under Articles 8 and 12 of the Statute of the ESCB, to the decision-making bodies of the ECB³.
- 2.2 Article 347 of the Treaty, however, envisages that a Member State may be called upon to take action in the event of serious internal disturbances affecting the maintenance of law and order, war, serious international tension constituting a threat of war, or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security. Accordingly, in the event of emergency conditions under Article 347, national authorities may be justified in exercising, on a temporary basis, powers that fall within the exclusive competence of the ESCB⁴.
- 2.3 Since Lithuania is a Member State with a derogation pursuant to Article 139 of the Treaty, the above requirements will apply once Lithuania adopts the euro and Lietuvos bankas becomes a fully integrated member of the Eurosystem.

3. Specific observations

- 3.1 Article 10 of the draft law defines the duties of Lietuvos bankas in crisis situations, providing that, ‘within its remit’, Lietuvos bankas is to: (1) carry out analysis of risk factors in the financial sector as well as analysis of information on the potential or actual crisis; (2) submit proposals to the government on measures for crisis prevention and crisis management in the financial sector as well as on the announcement or revocation of a state of crisis in the financial sector; (3) apply measures for crisis prevention and crisis management in accordance with laws and other legal acts; and (4) perform other functions related to crisis prevention and crisis management in accordance with the draft law and other legal acts.

The ECB understands the expression that Lietuvos bankas is acting ‘within its remit’ to imply that Lietuvos bankas will act within its competence under the Law on Lietuvos bankas, as well as under the Treaty and the Statute of the ESCB, and recommends clarifying the draft law accordingly.

² See Article 3(1)(c) of the Treaty.

³ See Opinion CON/2006/6, paragraph 8 and Opinion CON/2002/27, paragraph 9. All ECB opinions are published on the ECB’s website at www.ecb.europa.eu.

⁴ See Opinion CON/2006/6, paragraph 14.

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- 3.2 The ECB further understands that the list of tasks to be performed by Lietuvos bankas in crisis situations is not exhaustive and that Lietuvos bankas may be required to apply other measures and perform other functions, within its competence, which are laid down in other relevant legislation. Moreover, whilst Article 14 of the draft law lists potential crisis management measures without specifying any measure to be taken by Lietuvos bankas, it includes ‘any other measures necessary for the prevention of potential effects of the crisis or elimination of the effects thereof’. It is therefore not clear whether Article 14 of the draft law assigns any tasks to Lietuvos bankas, and the ECB recommends clarifying the draft law in this regard.
- 3.3 When implementing crisis prevention and management measures and performing functions under the draft law, any involvement of Lietuvos bankas should be fully compatible with its institutional and financial independence to safeguard the proper performance of its tasks under the Treaty and the Statute of the ESCB. The principle of central bank independence requires, *inter alia*, that Member States do not put their national central banks in a position where they have insufficient financial resources and inadequate net equity to carry out their tasks related to the ESCB or the Eurosystem⁵.

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

Done at Frankfurt am Main, 2 April 2014.

[signed]

The President of the ECB
Mario DRAGHI

⁵ See Opinion CON/2012/63, paragraph 6.1.