



OPINION OF THE EUROPEAN CENTRAL BANK

of 16 April 2014

on currency exchange operators

(CON/2014/27)

Introduction and legal basis

On 14 March 2014, the European Central Bank (ECB) received a request from the Lithuanian Ministry of Finance for an opinion on a draft law on currency exchange operators (hereinafter the ‘draft 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 first, second and third indents of Article 2(1) of Council Decision 98/415/EC¹, as the draft laws relate to currency matters, means of payment and 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 laws

1.1 The draft law aims to simplify the regulation of entities providing currency exchange services in Lithuania. It establishes a separate legal framework for the provision of currency exchange services and introduces a new entity into the Lithuanian financial market, i.e. the ‘currency exchange operator’.

At present, currency exchange services in Lithuania can be provided by: (1) credit institutions having a licence to provide such services; (2) other payment service providers and e-money institutions (when related to payment services or issue of e-money); and (3) financial brokerage firms (when related to investment services).

1.2 The draft law outlines the procedure for inclusion in the list of currency exchange operators, the procedure for commencement and termination of currency exchange activities, and the supervision of such activities. It also lays down the requirements applicable to currency exchange offices.

1.3 The draft law requires that a currency exchange office is equipped so as to ensure, inter alia, the proper protection of cash and the fulfilment of obligations laid down in legal acts regulating cash

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).

management. Such requirements, as well as the procedure for their implementation, are to be further specified by the supervisory authority.

- 1.4 The draft laws provide for Lietuvos bankas to be designated as the supervisory authority for currency exchange operators.

2. Specific comments

- 2.1 As regards the proper protection of cash as referred to in Article 8 of the draft law, Lietuvos bankas is entrusted² with setting requirements for credit and payment institutions and other economic entities engaged in the collecting, handling and recycling of banknotes and coins, as regards the verification of the authenticity of Lithuanian litas banknotes and coins and of the euro, and the detection of counterfeit money. Lietuvos bankas also monitors the fulfilment of such requirements.

Lietuvos bankas is accordingly responsible for ensuring that entities engaged in the processing and distribution to the public of euro notes and coins discharge their obligations under Article 6(1) of Council Regulation (EC) No 1338/2001³. The ECB therefore recommends that the draft law is clarified to ensure that the protection of “cash” includes the protection of the euro.

- 2.2 Furthermore, as Lietuvos bankas will be entrusted with new supervisory tasks, requiring additional human and financial resources, the ECB emphasises that any involvement of Lietuvos bankas should be fully compatible with its institutional and financial independence, in order to safeguard the proper performance of its tasks under the Treaty and the Statute of the European System of Central Banks and of the European Central Bank. 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 European System of Central Banks or the Eurosystem⁴. Accordingly, the ECB expects that Lietuvos bankas will have sufficient human and financial resources to perform its new tasks⁵.

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

² Article 6(3) of the Law on Lietuvos bankas. This provision was the subject of Opinion CON/2011/46. All ECB opinions are published on the ECB website at: <http://www.ecb.europa.eu>

³ 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). See, further, Council Regulation (EC) No 1339/2001 of 28 June 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 currency (OJ L 181, 4.7.2001, p. 11).

⁴ See Opinion CON/2012/63, paragraph 6.1.

⁵ See Opinion CON/2007/38, paragraph 2.3.

Done at Frankfurt am Main, 16 April 2014.

[signed]

The President of the ECB

Mario DRAGHI