



OPINION OF THE EUROPEAN CENTRAL BANK
of 22 April 2014
on monitoring the use of credit ratings by market participants
(CON/2014/28)

Introduction and legal basis

On 28 March 2014, the European Central Bank (ECB) received a request from the Lithuanian Ministry of Finance for an opinion on draft amendments to 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/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 main objective of the draft law is to designate a competent authority for the purpose of Regulation (EC) No 1060/2009 of the European Parliament and of the Council² (hereinafter the ‘Regulation’).
- 1.2 The draft law amends Article 42 of the Law on Lietuvos bankas which sets out the aim, functions, rights and obligations of Lietuvos bankas in performance of financial market supervision. The draft law provides that Lietuvos bankas is to carry out the functions of a competent authority assigned to it by the Regulation.

2. General observations

- 2.1 The ECB understands that Lietuvos bankas has been performing the functions of a competent authority for the purpose of the Regulation³ since 1 January 2012, when supervision of the entire Lithuanian financial market was integrated within Lietuvos bankas. This function was provided for in the Law on markets in financial instruments⁴ and not in the Law on Lietuvos bankas.

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 Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1).

³ Article 22(1) requires Member States to designate a competent authority for the purpose of the Regulation.

⁴ Article 70(2)(5) of the Law on markets in financial instruments.

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- 2.2 Article 5a(2) of the Regulation requires sectoral competent authorities in charge of supervising credit and other financial institutions⁵, taking into account the nature, scale and complexity of their activities, to monitor the adequacy of their credit risk assessment processes, assess the use of contractual references to credit ratings and, where appropriate, encourage them to mitigate the impact of such references, with a view to reducing sole and mechanistic reliance on credit ratings, in line with specific sectoral legislation.
- 2.3 The ECB understands that Lietuvos bankas' designation as a 'competent authority for the purpose of the Regulation' covers functions of the 'competent authority' specified in Article 22 of the Regulation and of the 'sectoral competent authority' specified in Article 25a of the Regulation.
- The ECB understands that the aim of the draft law is to extend and clarify the scope of Lietuvos bankas' competence for the purposes of the Regulation. In particular, according to the draft law, this function of Lietuvos bankas is now provided for in the Law on Lietuvos bankas along with its other functions, rights and obligations in performance of the supervision of all financial market participants and not in sectoral financial legislation regulating a specific sector of the financial market. The enactment of the draft law should result in clarifying and enhancing Lietuvos bankas' supervisory and regulatory powers in this field.

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

Done at Frankfurt am Main, 22 April 2014.

[signed]

The President of the ECB

Mario DRAGHI

⁵ Entities referred to in the first subparagraph of Article 4(1) of the Regulation, i.e. credit institutions, investment firms, insurance undertakings, reinsurance undertakings, institutions for occupational retirement provision, management companies, investment companies, alternative investment fund managers and central counterparties.