



EUROPEAN CENTRAL BANK

EUROSYSTEM

EN

ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 20 January 2016

on supervision of activities of cash handlers and imposition of administrative measures and penalties (CON/2016/2)

Introduction and legal basis

On 30 November 2015 the European Central Bank (ECB) received a request from the Lithuanian Ministry of Finance for an opinion on a draft law amending and supplementing 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 first, second and third indents of Article 2(1) of Council Decision 98/415/EC¹, as the draft law relates 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 law

- 1.1. The requirements of Council Regulation (EC) No 1338/2001², Regulation (EU) No 1210/2010 of the European Parliament and of the Council³, and Decision ECB/2010/14 of the European Central Bank⁴ have been partially implemented in Lithuania by Resolution No 03-162 of the Board of Lietuvos bankas setting out procedures for authenticity and fitness checking and recirculation of euro banknotes and coins⁵.
- 1.2. The main objective of the draft law is to further implement the requirements of the above mentioned Union legal acts. To this end, the draft law (a) clarifies the rights and obligations of Lietuvos bankas in supervising how cash handlers fulfil the requirements for the authenticity and fitness checking and recirculation of euro banknotes and coins, and (b) lays down measures ensuring that breaches of these requirements are subject to effective, proportionate and deterrent sanctions.

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 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).

³ Regulation (EU) No 1210/2010 of the European Parliament and of the Council of 15 December 2010 concerning authentication of euro coins and handling of euro coins unfit for circulation (OJ L 339, 22.12.2010, p. 1).

⁴ Decision ECB/2010/14 of the European Central Bank of 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes (OJ L 267, 9.10.2010, p. 1).

⁵ Resolution No 03-162 of the Board of Lietuvos bankas of 16 September 2014 on the procedures for authenticity and fitness checking and recirculation of euro banknotes and coins (Register of Legal Acts, 22 September 2014, No 2014-12683).

- 1.3. The draft law introduces a specific sanctioning regime for persons committing infringements. In accordance with Article 47⁷(6) of the draft law, Lietuvos bankas has the right to impose administrative fines amounting to a maximum of 10 % of total annual income in the case of legal persons and EUR 50,000 in the case of natural persons.

2. General observations

- 2.1. The ECB notes that it has previously been consulted by Lietuvos bankas on Resolution No 03-162 of the Board of Lietuvos bankas when it was at draft stage⁶. Some of the ECB's remarks previously expressed in its opinion given in response to that consultation are also applicable to the draft law.
- 2.2. The ECB considers it essential that any draft legislation should uphold the principle of the primacy and direct application of Union law on the authentication of euro banknotes and coins and the handling of euro banknotes and coins unfit for circulation. For consistency's sake, the ECB favours the use in national legislation of direct references to Regulation (EC) No 1338/2001, Regulation (EU) No 1210/2010 and Decision ECB/2010/14 or, alternatively, the reproduction of their provisions without any alterations or additions⁷.
- 2.3. In its previous opinion⁸ the ECB noted that the national regime for sanctions and reporting did not fully reflect Regulation (EC) No 1338/2001 and Decision ECB/2010/14 as regards the range of sanctions that may be imposed for failing to carry out authenticity and fitness checking of euro banknotes and coins prior to circulation. In addition, the ECB noted that Lithuanian legislation did not provide for the imposition of administrative penalties (fines) on legal entities.
- 2.4. The ECB welcomes the draft law, which takes into account those observations and establishes a deterrent sanctions regime for non-compliant cash handlers. The ECB is confident that the provisions of the draft law will support the protection of euro banknotes and coins in circulation and thereby maintain the general public's confidence in euro banknotes and coins.
- 2.5. The ECB believes that the sanctioning regimes available in the Member States that have aligned their law with Regulation (EC) No 1338/2001 in conjunction with Decision ECB/2010/14 may benefit from harmonisation insofar as the procedures laid down by the ECB in that Decision are equally applicable to all cash handlers located in the euro area⁹. In this respect, the ECB considers it important for national authorities to contribute to the establishment of a level playing field among cash handlers falling within the scope of Regulation (EC) 1338/2001, without prejudice to (a) the particularities of the cash cycle and the organisation of cash handlers at national level, and (b) the consistency of the levels of financial penalties available in their legal systems.

⁶ See Opinion CON/2014/65. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

⁷ See paragraph 2.2 of Opinion CON/2014/65.

⁸ See paragraph 6.3 of Opinion CON/2014/65.

⁹ See paragraph 3.4 of Opinion CON/2010/87.

3. Specific observations

- 3.1. Under the draft law, when non-compliance by a cash handler with relevant Union acts, including ECB legal acts, or the provisions of the draft law, is detected, Lietuvos bankas may, among other things, prohibit a cash handler from recirculating euro banknote denominations of the series concerned until such non-compliance is rectified¹⁰. The ECB reiterates that when Lietuvos bankas prohibits recirculation in such a situation, it does so on behalf of the ECB¹¹.
- 3.2. To ensure that fines have a deterrent effect, the maximum amount of a fine should be a sum which effectively deters cash handlers from breaching their obligations¹². In this respect, the ECB welcomes the provision of the draft law which grants the right to Lietuvos bankas, notwithstanding the maximum fines set out in the draft law, to impose a fine of up to the double the amount of any illegal income, other financial benefits, evaded losses or damage caused due to the infringement in question.

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

Done at Frankfurt am Main, 20 January 2016.

[signed]

The President of the ECB

Mario DRAGHI

¹⁰ Article 47⁷(1)(1) of the draft law.

¹¹ In accordance with Article 10(3) of Decision ECB/2010/14.

¹² See paragraph 4.2 of Opinion CON/2011/105.