



E U R O P E A N C E N T R A L B A N K

OPINION OF THE EUROPEAN CENTRAL BANK

of 4 September 2003

at the request of the Belgian Ministry of Finance

**on a draft proposal for a royal decree implementing Article 118 of the Law of 2 August 2002
relating to the prudential supervision of the financial sector and of financial services**

(CON/2003/19)

1. On 7 August 2003 the European Central Bank (ECB) received a request dated 31 July 2003 from the Belgian Ministry of Finance for an opinion on a draft royal decree implementing Article 118 of the Law of 2 August 2002 relating to the prudential supervision of the financial sector and of financial services (hereinafter the ‘draft decree’).
2. The ECB’s competence to deliver an opinion is based on the second indent of Article 105(4) of the Treaty establishing the European Community and the third, fifth and sixth indents of Article 2(1) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the ECB by national authorities regarding draft legislative provisions¹, since the draft decree establishes the methods of cooperation – in particular the methods, content and financing of the efficient pooling of various activities – between the Nationale Bank van België/ Banque Nationale de Belgique (NBB) and the Belgian Banking, Financial and Insurance Commission (BFIC)² in, *inter alia*, the fields of prudential policy, payment, clearing and settlement systems, and international relations. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council of the ECB has adopted this opinion.
3. On 18 March 2002 the ECB was consulted on a draft Belgian law relating to the prudential supervision of the financial sector and financial services (hereinafter the ‘Law’). The ECB gave its opinion on 24 April 2002 (CON/2002/13). The Law was adopted on 2 August 2002 and entered into force on 1 June 2003. Article 117(1) of the Law establishes the principle of cooperation between the NBB and the BFIC in relation to issues of common interest, and lists certain specific areas of cooperation. Further, Article 118 of the Law states that the King of Belgium may, in the absence of any relevant agreement between the NBB and the BFIC, establish the methods of this

¹ OJ L 189, 3.7.1998, p. 42.

² The BFIC will be established on 1 January 2004 and will result from the integration of the current Belgian insurance supervisory authority into the current Belgian banking and finance supervisory authority.

cooperation by royal decree³. The purpose of the draft decree is to lay down such methods on the basis of Article 118 of the Law. The ECB broadly welcomes the draft decree in view of its objective, i.e. increasing the efficiency and effectiveness of the NBB and the BFIC through mutual cooperation in fields of common interest, while at the same time observing their respective powers and responsibilities and guaranteeing the confidentiality of any information exchanged.

4. The ECB welcomes the fact that Article 2 of the draft decree states that the methods of this cooperation do not alter the respective powers of the NBB⁴ and the BFIC, and that each remains fully responsible for its respective decisions and actions. As the ECB mentioned in its opinion CON/2002/13, this is particularly important for the tasks that the NBB has to execute pursuant to the Treaty and the Protocol on the Statute of the European System of Central Banks and of the European Central Bank within the framework of the European System of Central Banks (ESCB). The ECB emphasises that cooperation between the NBB and the BFIC should not impinge upon the independent execution of the above tasks by the NBB, nor upon the fact that, in executing these tasks, the NBB might be obliged to keep certain information confidential vis-à-vis the BFIC as well.
5. The ECB also welcomes the fact that Article 2 of the draft decree states that the draft decree does not affect the agreements or memoranda already concluded between the NBB and the BFIC. This is particularly relevant to the *Memorandum of understanding on co-operation between payment systems overseers and banking supervisors in stage three of economic and monetary union* and the *Memorandum of understanding on high-level principles of co-operation between banking supervisors and central banks of the European Union in crisis management situations*, to which both the NBB and the BFIC are also signatories.
6. The ECB further notes with respect to Article 2 of the draft decree that according to Article 117(3) of the Law, the Financial Stability Committee (FSC), which will deal with issues of common interest to the NBB and the BFIC and which will be made up of the management boards of the NBB and the BFIC, will decide by double majority (i.e. within the FSC itself and separately within the NBB and the BFIC) on the determination and management of the activities to be jointly exercised. The ECB emphasised in its opinion (CON/2002/13) the risk that, under specific but possibly remote circumstances, this mechanism might result in the decision-making process being obstructed in cases where the FSC's view differed from that of the NBB and/or the BFIC. As Article 2 of the draft decree confirms that the respective powers of the NBB and the BFIC remain unaffected, the ECB assumes that the necessary safeguards exist or will be put in place to ensure that the NBB can continue to pursue its tasks within the framework of the ESCB independently.

³ See ECB opinion CON/2002/13 for the obligation to consult the ECB when measures on the basis of Article 118 of the Law were proposed.

⁴ The ECB would again like to draw attention to the fact that it considers that the inclusion in the NBB's Statute and Organic Law of the task of contributing to the stability of the financial system (see opinion CON/2002/13) is beneficial. This is also relevant to distinguish between the respective powers of the NBB and the BFIC in the context of the draft decree.

7. As regards cooperation between the NBB and the BFIC in the field of payment, clearing and settlement systems (see Article 5 of the draft decree), the ECB points out that on 1 August 2003 a joint task force of the ESCB and the Committee of European Securities Regulators (CESR) launched a public consultation procedure regarding standards applicable to clearing and settlement systems in the European Union. The outcome of this procedure might result in changes to the general standards currently applicable to such systems. Consistent with the objective of the entire draft decree, Article 5 of the draft decree also appears only to lay down the methods of close cooperation between the NBB and the BFIC with regard to payment, clearing and settlement systems and does not affect the respective (oversight) tasks of the NBB and the BFIC in this field. The ECB nevertheless assumes that the Belgian authorities are aware of the fact that Article 5 of the draft decree, if enacted, may need to be revised to take into account the results of the work undertaken by the ESCB/CESR task force.
8. The ECB welcomes the fact that Article 20 of the draft decree states that the NBB and the BFIC shall treat as confidential all information exchanged between them in the context of their cooperation which does not fall under the professional secrecy by which they are both bound. The ECB notes in this respect that, according to the explanatory memorandum to the draft decree, the professional secrecy obligations applicable to the NBB and the BFIC are no obstacle to such exchange of information, since the Law provides that these institutions may exchange information covered by these obligations in so far as this information is necessary for the accomplishment of their respective tasks. This reflects the standpoint adopted in various European Union directives according to which the duty of professional secrecy does not prevent the transmission of information between the competent authorities. The ECB would nevertheless draw attention again to its remarks in paragraph 4 regarding the NBB's independence and confidentiality obligations in relation to tasks executed within the framework of the ESCB.
9. The ECB emphasises that, notwithstanding the two explicit statements made in Articles 2 and 20 of the draft decree (see paragraphs 4 and 8 of this opinion), it is equally important to adopt and implement internal measures in order also to respect in practice the distinct powers and responsibilities of the NBB and the BFIC and their respective secrecy and confidentiality obligations. Such measures would in particular concern cooperation between the NBB and the BFIC in the fields of prudential policy (Article 4 of the draft decree), payment, clearing and settlement systems (Article 5 of the draft decree), processing of external confidential information (Article 6 of the draft decree), legal services (Articles 8 and 9 of the draft decree), international activities (Article 10 of the draft decree), information technology (Article 12 of the draft decree) and archives (Article 16 of the draft decree). These measures could, for example, be implemented by establishing and monitoring the effective operation and enforcement of so-called 'Chinese walls' or 'firewalls'. These could, *inter alia*, regulate and restrict access by employees of the NBB and the BFIC to computer files and documents containing information relating to the independent

and/or confidential execution of the respective tasks entrusted to these institutions. The ECB assumes that the NBB and the BFIC will take the measures necessary to achieve this.

10. The ECB confirms that it has no objection to the competent national authorities making this opinion publicly available at their discretion. This opinion will be published on the ECB's website six months after the date of its adoption.

Done at Frankfurt am Main on 4 September 2003.

The President of the ECB

[signed]

Willem F. DUISENBERG