



OPINION OF THE EUROPEAN CENTRAL BANK

of 29 October 2012

on profit distribution between the Nationale Bank van België/Banque Nationale de Belgique and the Belgian State

(CON/2012/81)

Introduction and legal basis

On 4 October 2012, the European Central Bank (ECB) received a request from the Nationale Bank van België/Banque Nationale de Belgique (NBB), acting on behalf of the Belgian Minister for Finance, for an opinion on a draft law repealing a profit distribution rule between the NBB and the Belgian State and amending the Law of 28 July 1948 on the reorganisation of the balance sheet of the NBB (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/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions¹, as the draft law relates to the NBB. 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. Purposes of the draft law

The draft law aims to delete, from 1 January 2012, the third paragraph of Article 3(b) of the Law on the reorganisation of the balance sheet of the NBB, which provides for a stand-alone obligation of the NBB to pay the Belgian State an annual amount of 986 million Belgian francs (EUR 24.4 million).

The purpose of this obligation, introduced in 1991, was to neutralise the Belgian State’s additional annual expenditure resulting from the one-off conversion of the NBB’s consolidated claim on the Belgian State into freely marketable securities bearing interest at market rates for a total of 34 billion Belgian francs. Pursuant to the distribution rules in force at the time, the Belgian State was to receive the net financial proceeds in excess of 3% of the difference between the average amount of the NBB’s interest-bearing assets and remunerated liabilities calculated on an annual basis. Taking into account an adjustment of 0.1% out of this 3% (due to the partial compensation for the maintenance of the banknotes in circulation), the application of the ‘3% rule’ to the 34 billion Belgian francs corresponding to the aggregate amount of freely marketable securities bearing interest at market rates

¹ OJ L 189, 3.7.1998, p. 42.

booked in the NBB's balance sheet resulted in an amount of EUR 24.4 million². Subsequently, Article 2 of the Law of 3 April 2009 amending the financial provisions of the Law of 22 February 1998 establishing the Organic Statute of the Nationale Bank of België/Banque Nationale de Belgique (hereinafter the 'Organic Statute of the NBB') repealed the '3% rule'. Article 3 introduced a new profit distribution rule in Article 32 of the Organic Statute of the NBB according to which the NBB's annual profits are allocated as follows: (a) from the excess of NBB annual profits after allocation to shareholders of a first dividend of 6% of the NBB's capital, an amount proposed by the NBB's Board of Directors and established by its Council of Regency is independently allocated to the reserve fund or to the available reserves; (b) from the remaining profits a second dividend established by the Council of Regency of a minimum of 50% of the net proceeds from assets forming the counterpart to the reserve fund and available reserves is allocated to shareholders; and (c) finally, the balance is allocated to the State. Articles 2 and 3 of that law entered into force on 1 January 2009. The ECB was consulted on this new profit distribution rule and adopted Opinion CON/2009/4.

2. General observations

Any transfer of a national central bank's resources to a Member State, either in the form of a profit distribution scheme or any equivalent form, needs to comply with the limitations imposed in this respect by the Treaty, in particular with the principle of central bank independence pursuant to Article 130 of the Treaty, and with the prohibition on monetary financing laid down in Article 123(1)³.

3. Specific observations

The draft law repeals the stand-alone obligation of the NBB to pay on a yearly basis to the Belgian State a fixed amount of EUR 24.4 million. The ECB understands that since the repeal of the '3% rule' in 2009, the NBB has continued to pay this stand-alone amount, which was, however, computed in its annual accounts as an expense, thereby deducting from the total amount of distribution made to the State in accordance with Article 32 of the Organic Statute of the NBB⁴ the amount of EUR 24.4 million. As this obligation is formally incompatible with the (new) profit distribution rules contained in Article 32 of the Organic Statute of the NBB, repealing it removes the risk of inconsistent profit allocation. These profits will now be exclusively governed by the Organic Statute of the NBB. In addition, the ECB understands that the agreement between the NBB and the Ministry of Finance setting out the details of the application of Article 3(b) of the Law on the reorganisation of the balance sheet of the NBB is terminated. This would, in turn, strengthen the overall financial independence of the NBB, whose discretion will no more be restricted by requirements to take into account fixed annual payments to the Belgian State.

² See the preparatory work of the draft law on public debt market and monetary policy instruments, Senate, 1001-1 (1990 – 1991), p. 6 and 21.

³ See for example CON/2011/91 paragraph 2 and CON/2011/99 paragraph 2.3.

⁴ See the annual accounts and reports for the financial year 2011, p. 63 (section 6) and p. 78, including footnote (1).

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

Done at Frankfurt am Main, 29 October 2012.

[signed]

The President of the ECB

Mario DRAGHI