



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 8 June 2018

on various financial law provisions

(CON/2018/29)

Introduction and legal basis

On 11 May 2018 the European Central Bank (ECB) received a request from the Belgian Minister for Finance for an opinion on a draft law on various financial law provisions (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, fifth and sixth indents of Article 2(1) of Council Decision 98/415/EC¹, as the draft law relates to the Nationale Bank van België/Banque Nationale de Belgique (NBB), payment and settlement systems, rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets and the ECB's tasks concerning policies relating to the prudential supervision of credit institutions. 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 has a number of purposes.

- 1.1 First, the draft law adapts the Belgian legal framework to Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (hereinafter the 'CSDR')². To this end, it aligns the concepts used in various Belgian laws³ with the CSDR. It also redrafts the provisions relating to CSDs contained in the Law of 22 February 1998 establishing the Organic Statute of the Nationale Bank van België/Banque Nationale de Belgique (hereinafter the 'NBB Organic Law')⁴ to designate the NBB as the competent authority under the CSDR for authorising and supervising CSDs established in Belgian territory. In carrying out these tasks, the NBB shall continue using the various regulatory, investigatory and sanctioning powers over CSDs that are already set out in the NBB Organic Law, including the power to impose penalty payments. The draft law furthermore

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 OJ L 257, 28.8.2014, p. 1.

³ These include Royal Decree No 62 of 10 November 1967 on the deposit of fungible financial instruments and the settlement of transactions in such instruments; the Law of 2 January 1991 on the public debt market and instruments for monetary policy; the Law of 22 February 1998 establishing the Organic Statute of the Nationale Bank van België/Banque Nationale de Belgique; and the Law of 2 August 2002 on the supervision of the financial sector and on financial services.

⁴ Loi du 22 février 1998 fixant le statut organique de la Banque Nationale de Belgique/wet van 22 februari 1998 tot vaststelling van het organiek statuut van de Nationale Bank van België.

delineates the competences to be exercised by the Financial Services and Markets Authority in respect of the authorisation and supervision of CSDs, which may be further specified in a memorandum of understanding concluded with the NBB.

- 1.2 Second, the draft law designates the NBB as the competent authority under Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (hereinafter, 'Regulation (EU) 2015/2365')⁵. The NBB is to ensure due compliance by financial and non-financial counterparties subject to its supervision with the requirement to report to a trade repository the details of any securities financing transaction they have concluded and any modification or termination thereof, as well as the reuse of financial instruments received as collateral⁶. To this end, the NBB is enabled to use the various existing regulatory, investigatory and sanctioning powers set down in the NBB Organic Law also over supervised financial institutions, including the power to impose penalty payments.
- 1.3 Third, the draft law adapts the NBB Organic Law to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)⁷. In particular, the draft law specifies that the NBB, when acting in its capacity as administrative authority under Article 22 *quinquies* of the Law of 11 December 1998 on security classification, security clearance, security certificates and security advisory notices⁸, is empowered to process personal data relating to criminal convictions and offences in departure from the General Data Protection Regulation where this is justified and necessary for the NBB to exercise its tasks. The NBB may transfer to the Belgian Data Protection Authority information that is necessary for the exercise of the latter's tasks in accordance with a memorandum of understanding to be entered into between the two authorities.
- 1.4 Fourth, the draft law partially implements Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017 amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy⁹. For this purpose, the draft law amends specific provisions of the Banking Law¹⁰ in order to reflect certain provisions of Directive (EU) 2017/2399.

2. General observations

This opinion only assesses those provisions of the draft law that may have an impact on the role and tasks of the NBB as a central bank, national supervisory authority, resolution authority and

⁵ OJ L 337, 23.12.2015, p. 1.

⁶ See Articles 4 and 15 of Regulation (EU) 2015/2365.

⁷ OJ L 119, 4.5.2016, p. 1.

⁸ *Loi du 11 décembre 1998 relative à la classification et aux habilitations, attestations et avis de sécurité/Wet van 11 december 1998 betreffende de classificatie en de veiligheidsmachtigingen, veiligheidsattesten en veiligheidsadviezen.*

⁹ OJ L 345, 27.12.2017, p. 96.

¹⁰ Law of 25 April 2014 on the status and supervision of credit institutions and brokerage firms (*Loi du 25 avril 2014 relative au statut et au contrôle des établissements de crédit et des sociétés de bourse/Wet van 25 april 2014 op het statuut van en het toezicht op kredietinstellingen en beursvennootschappen*).

member of the Eurosystem and the European System of Central Banks. It does not consider whether the draft law, if adopted as proposed, would represent an effective means of implementing Union law requirements in Belgium.

3. Tasks of the NBB

The draft law does not confer any genuinely new tasks on the NBB. While the draft law designates the NBB as the competent authority under the CSDR to authorise and supervise CSDs, the NBB Organic Law already empowers the NBB to supervise the legal entities operating securities settlement systems and confers various regulatory, investigatory and sanctioning powers on the NBB in this respect¹¹. Furthermore, in carrying out its tasks as competent authority under Regulation (EU) 2015/2365, the draft law enables the NBB to use its existing powers under the NBB Organic Law in order to ensure due compliance with that Regulation¹². Consequently, the issue of assessing the conferral of new tasks on a national central bank from the perspective of the prohibition of monetary financing does not arise¹³.

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

Done at Frankfurt am Main, 8 June 2018.

[signed]

The President of the ECB

Mario DRAGHI

¹¹ See Chapter IV/2, as currently drafted, which already relates to the authorisation, supervision and control of the legal entities operating the settlement systems and the assimilated settlement systems. Articles 36/29 and 36/30 of that Chapter empower the NBB to request information, conduct (on-site) inspections and impose sanctions, if necessary.

¹² See Article 36/25 *ter* inserted by the draft law, which empowers the NBB to use the powers in Chapter IV/1 (provisions on the control of financial institutions) and Chapter IV/2 (provisions on the authorisation, supervision and control of CSDs and financial and non-financial counterparties), including those in Articles 36/29 and 36/30 empowering the NBB to request information, conduct (on-site) inspections and impose sanctions, if necessary.

¹³ See paragraph 2.3 of Opinion CON/2018/15.