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EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 12 November 2008

at the request of the Belgian Minister for Justice

on a draft royal decree designating the institution entrusted with managing a database containing relevant information about issuers in the context of the dematerialisation of their securities

(CON/2008/64)

Introduction and legal basis

On 25 September 2008 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 Justice, for an opinion on a draft royal decree designating the institution entrusted with managing a database containing relevant information about issuers in the context of the dematerialisation of their securities (hereinafter the 'draft royal decree').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community and the third and fifth indents 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 provisions[1], as the draft royal decree relates to the NBB and to payment and settlement systems. 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 royal decree

The draft royal decree is an element of the dematerialisation process and gradual phasing-out of bearer securities in Belgium provided for under the Law of 14 December 2005 abolishing bearer securities[2], and implements Article 8 of that law. Under the draft royal decree, the NBB is designated as the institution responsible for managing a database containing information about issuers which is relevant in the context of the Law of 14 December 2005[3], including notably the international security identification number (ISIN), the nature, the issue date and maturity date of securities issued before 1 January 2014, the number of the final coupon to be materially paid out, the date on which the coupon becomes payable, etc.[4] The

1 OJ L 189, 3.7.1998, p. 42.

2 See ECB Opinion CON/2005/43 of 3 November 2005 at the request of the Belgian Ministry of Finance on a draft law abolishing bearer securities and a draft royal decree concerning dematerialised corporate securities. See also ECB Opinion CON/2007/37 of 19 November 2007 at the request of the Belgian Ministry of Finance on a draft royal decree amending the Organic Statute of the Nationale Bank van België/Banque Nationale de Belgique. All ECB opinions are available on the ECB website, www.ecb.europa.eu.

3 Article 3 of the draft royal decree.

4 The list of information to be reported is laid down in Article 4 §1 of the draft royal decree.

ECB understands that since the Law of 14 December 2005 does not provide for all bearer securities to be converted into dematerialised securities at the same time[5], it is considered useful to establish a database that would provide an efficient means for all parties concerned to have access to all relevant information in the context of the dematerialisation process. Notably, the database would allow its users to verify whether a security or a coupon has already been dematerialised[6]. The draft royal decree would impose a reporting obligation on the following institutions[7]: (i) those securities settlement institutions which are authorised to maintain and settle transactions in dematerialised corporate securities and the authorised account keepers for such securities; and (ii) the securities settlement institutions and their participants referred to in coordinated Royal Decree No 62 of 10 November 1967 relating to the deposit of fungible financial instruments and the settlement of transactions in such instruments. The reporting institutions would pay the NBB a fixed fee by ISIN when reporting the required information[8]. The database would be accessible until 31 December 2014 under the detailed rules and in return for remuneration to be laid down in a regulation available at the NBB on demand[9]. The draft royal decree itself contains no further provisions on access to the database. The ECB understands that any remuneration for inputting data into the database and for accessing it would only be collected with the aim of covering the costs incurred by the NBB in developing and exploiting the database and should be sufficient for that purpose.

2. General observations

The ECB understands that the NBB has already developed the database and that it has been fully operational since December 2007, but that it is now considered appropriate to adopt a legal act that would oblige all relevant institutions to report. The ECB welcomes the draft royal decree as it would establish such a legal basis and therefore ensure that the database is complete and useful in practice.

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

Done at Frankfurt am Main, 12 November 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET

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5 Whereas new issuances of bearer securities are prohibited from 1 January 2008 onwards (Article 3 of the Law of 14 December 2005), the conversion of existing bearer securities into either registered or dematerialised securities is gradually being organised during the period from 1 January 2008 to 31 December 2013 (Articles 5 to 7 of the Law), and all remaining bearer securities still existing on 1 January 2014 will automatically be converted into dematerialised securities (Article 9 of the Law).

6 See the report to the King accompanying the draft royal decree.

7 Article 1, 3° of the draft royal decree. In the event that a whole issue is converted into registered securities, the institutions appointed by the issuer as holders of the registered securities register should also report the information in Article 4 §1 of the draft royal decree as soon as possible.

8 Article 4 §3 of the draft royal decree.

9 Article 6 of the draft royal decree.