EN

EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 22 December 2008

at the request of the Belgian Ministry of Justice

on a draft law aimed at enhancing the rules on the functioning of company bodies, in particular by introducing into the Companies Code provisions regarding a corporate governance statement and the establishment of a remuneration committee, by limiting severance payments for certain company representatives and by reforming the system of statutory disabilities in the banking and financial sector

(CON/2008/91)

Introduction and legal basis

On 5 December 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 Ministry of Justice, for an opinion on a draft law aimed at enhancing the rules on the functioning of company bodies, in particular by introducing into the Companies Code provisions regarding a corporate governance statement and the establishment of a remuneration committee, by limiting severance payments for certain company representatives and by reforming the system of statutory disabilities in the banking and financial sector (hereinafter the 'draft law').

The ECB's competence to deliver an opinion is based on Article 105(4) of the Treaty establishing the European Community 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 provisions[1], as the draft law relates to the NBB. In accordance with the consultation request, this opinion focuses on the application to the members of the NBB's Board of Directors, including the Governor, of the provision of the draft law establishing a limit on severance payments. 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

On a general note, the draft law is motivated by the Belgian authorities' wish to increase confidence in the financial sector[2]. The draft law has a triple purpose. First, it transposes into Belgian law certain provisions of Directive 2006/46/EC[3] which require listed companies to include a corporate governance statement in

1 OJ L 189, 3.7.1998, p. 42.

2 Explanatory memorandum to the draft law, p. 13.

3 Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on

their annual report[4]; beyond this transposition, the draft law also requires such companies to include a remuneration report in their corporate governance statement[5] and to establish within their board of directors a remuneration committee composed of non-executive directors and entrusted with advisory tasks[6]. Second, it introduces a limit on severance payments that may be awarded to executive directors of listed companies and to persons entrusted with their day-to-day management[7]. This limit would apply to the total compensation awarded to an executive director of a listed company (or of a subsidiary thereof) when they cease to carry out[8] their mandate in the listed company[9]. Third, it aims at reforming the system of statutory disabilities in the banking and financial sector[10].

2. General observations

The limit placed on severance payments by Article 14 of the draft law applies to all listed companies including the NBB as a consequence of its having the legal status of a listed company[11] [12]. The draft law, the objective of which is to "dispel, in the interest of investors' confidence in the financial markets, the concerns raised with regard to the exorbitant severance payments which may be awarded to certain company representatives when they cease to carry out their mandate in listed companies"[13], does not target specifically the decision-making bodies of the national central bank and does not raise any issues as concerns compliance with the principle of personal independence. In this context it should be noted that the members of the NBB's Board of Directors, including the Governor, continue to fall within the scope of Article 14.2 of the Statute of the European System of Central Banks and of the European Central Bank which provides that they may only be relieved from office if they no longer fulfil the conditions required for the performance of their duties or have been guilty of serious misconduct.

---

the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings, OJ L 224, 16.8.2006, p. 1.

4 Article 3 of the draft law, introducing a new Article 96(2) in the Companies Code.

5 Article 3 of the draft law, introducing a new Article 96(3) in the Companies Code, drawing on Commission Recommendation 2004/913/EC of 14 December 2004 fostering an appropriate regime for the remuneration of directors of listed companies, OJ L 385, 29.12.2004, p. 55.

6 Article 6 and 7 of the draft law, respectively introducing a new Section III*ter* and a new Article 526*quarter* in the Companies Code.

7 Article 14 of the draft law, introducing a new Article 520*bis* in the Companies Code.

8 According to the explanatory memorandum, the normal expiry of the directors' term of office is covered and the limit applies regardless of the party (i.e. director or company) who takes the initiative regarding the termination (explanatory memorandum to the draft law, pp. 16 and 17).

9 Under the draft law, such compensation must not exceed the lowest of the two following amounts: (i) the remuneration that would be due for the remaining duration of the legal relationship which is terminated; or (ii) the remuneration corresponding to one-year's salary, or when this amount is higher, a compensation equal to one fourth of the annual remuneration per period of five years of service with a maximum of 18 months' remuneration.

10 Articles 23 to 32 of the draft law. This system is composed of the various laws whose application is supervised by the *Commissie voor het Bank-, Financie- en Assurantiewezen/Commission Bancaire, Financière et des Assurances*, which establish a prohibition on carrying out the function of, in particular, director of a supervised institution which applies to persons who have been convicted of certain offences.

11 Explanatory memorandum to the draft law, p. 16.

12 See ECB Opinion CON/2002/18 of 9 July 2002 at the request of the Belgian Ministry of Finance on a draft for a new Article 879 of the Companies Code, introduced by the Programme Law, as well as several articles interpreting and amending the Organic Law of the Nationale Bank van België/Banque Nationale de Belgique, introduced by paragraphs 6 to 10 of Article 141 of the draft law on the prudential supervision of the financial sector and financial services.

13 Explanatory memorandum to the draft law, p. 13.

3. Specific comments

The ECB understands that the draft law is without prejudice to Article 2 of the Law of 22 February 1998 establishing the Organic Statute of the Nationale Bank van België/Banque Nationale de Belgique which establishes the supplementary nature of the provisions concerning public limited liability companies and that, hence, the competence to approve the annual report on operations and the accounts presented to the general meeting which lies with the NBB's Council of Regency[14] would not be affected by the draft law[15].

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

Done at Frankfurt am Main, 22 December 2008.

[signed]

The President of the ECB

Jean-Claude TRICHET

14 Article 28(3) and Article 30(5) of the NBB's Statute.

15 See in particular Article 10 of the draft law, introducing an Article 554 in the Companies Code.