EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

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

(CON/2007/37)

Introduction and legal basis

On 19 October 2007 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 Finance, for an opinion on a draft royal decree amending Article 4 of the Law of 22 February 1998 establishing the Organic Statute of the Nationale Bank van België/Banque Nationale de Belgique (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 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 royal decree concerns 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. Purpose of the draft royal decree

The draft royal decree amends the Law of 22 February 1998 to allow for the conversion of NBB's bearer shares into dematerialised shares from 1 January 2008 onwards. More specifically, Article 4, which currently provides that NBB's shares not subscribed by the Belgian State are held as registered or bearer shares, will be amended to allow such shares to also be held in a dematerialised form. In addition, under the draft royal decree, second and third indents are added to Article 4. The second indent specifies that bearer shares which have already been issued and held on securities accounts on 1 January 2008 will be converted into dematerialised shares on this date. From 1 January 2008, other bearer shares will automatically be converted into dematerialised shares as they are booked onto securities accounts. The third indent provides that 'apart from those belonging to the State, shares can be converted into registered shares or dematerialised shares, at no cost, at the option of the owner'.

1 OJ L 189, 3.7.1998, p. 42.

These changes are necessary due to Article 5 of the Law of 14 December 2005 abolishing bearer securities under which listed bearer securities issued by companies incorporated under Belgian law and held on securities accounts are automatically converted into dematerialised securities from 1 January 2008. In addition, by virtue of Article 6 of the Law of 14 December 2005, the corresponding companies must amend their articles of incorporation accordingly and take the appropriate steps with securities settlement institutions in order to comply with Article 468, fourth indent of the Companies Code.

As a limited liability company incorporated under Belgian law with part of its capital represented by transferable bearer or registered shares (the rest being non transferable and held by the State in registered form), the NBB falls within the scope of the above-described requirements. However, the NBB's articles of incorporation can only be changed after Article 4 of the Law of 22 February 1998 is amended. Therefore, the changes proposed by the draft royal decree are a prerequisite for the due implementation by NBB of the Law of 14 December 2005.

It should be noted that, since NBB's transferable shares are listed and traded on the Brussels Stock Exchange, there is a requirement that they are held at the domestic Central Security Depository, i.e. the *Caisse Interprofessionnelle de dépôts et de virements de titre*/*Interprofessionele effectendeposito- en girokass*, pursuant to Article 6.1 of the Royal Decree of 12 January 2006 relating to dematerialised corporate securities.

2. General observations

The ECB understands that the draft royal decree contains changes of a merely technical nature, since it allows the adaptation of NBB's articles of incorporation to the requirements of the Law of 14 December 2005, and that the proposed amendment of NBB's articles of incorporation does not change, nor does it purport to change the existing composition of the shareholding of the NBB. Therefore, from the ECB's perspective, the proposed amendment does not give rise to any particular observations. Reference should be made to 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, which established the dematerialisation regime implemented by the draft royal decree.

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

Done at Frankfurt am Main, 19 November 2007.

[signed]

The President of the ECB

Jean-Claude TRICHET