EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 12 August 2013

on OTC derivatives, central counterparties and trade repositories

(CON/2013/59)

Introduction and legal basis

On 5 July 2013, 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 Articles 2 to 13 of a draft law implementing Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories[1] (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/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions[2], since Articles 2 to 13 of the draft law relate to the NBB, payment and settlement systems and the rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets. 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

1.1 The purpose of Articles 2 to 13 of the draft law is to allocate responsibilities to the NBB and the Financial Services and Markets Authority (FSMA) with regard to the authorisation and supervision of central counterparties (CCPs) established in Belgium pursuant to Article 22 of Regulation (EU) No 648/2012.

1 OJ L 201, 27.7.2012, p. 1. The full title of the draft law is 'Law amending the law of 22 February 1998 establishing the organic statute of the National Bank of Belgium, the law of 2 August 2002 on the supervision of the financial sector and on financial services, the law of 22 March 1993 on the status and control of credit institutions, the law of 9 July 1975 on the control of insurance undertakings, the law of 21 December 2009 on the status of payment undertakings and electronic money undertakings, on the access to the activity of payment service providers, to the activity of issuance of electronic money and to the access to payment systems, the law of 28 April 1999 implementing the Directive 98/26/EC of 19 May 1998 on the finality of settlement in payment and securities settlement systems and the law of 15 December 2004 on financial collateral and providing for various tax provisions for arrangements establishing collateral arrangements and loans with respect to financial instruments'.

2 OJ L 189, 3.7.1998, p. 42.

1.2 To this end, the draft law introduces the definition of 'CCP'[3] in the Organic Statute of the National Bank of Belgium as a replacement for the existing concept of 'clearing institution'[4]. With this change, CCPs become subject to the NBB's overall prudential supervision under Article 36/2 of the Organic Statute of the National Bank of Belgium. In parallel, the draft law[5] designates the NBB as the competent authority for the authorisation and supervision of CCPs within the context of Regulation (EU) No 648/2012. This designation is without prejudice to the powers conferred on the FSMA by Article 22 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services, as amended by the draft law.

1.3 As the responsible authority for carrying out the duties for the authorisation and supervision of CCPs established in Belgium pursuant to Regulation (EU) No 648/2012, the NBB also becomes responsible, in accordance with Article 22(2) and (3) of the above-mentioned Regulation as implemented in the draft law, for: (a) coordinating cooperation and the exchange of information with the European Commission, the European Securities and Market Authority, the competent authorities of other Member States, the European Banking Authority, and the relevant members of the European System of Central Banks; and (b) taking administrative measures and imposing administrative fines and penalties where CCPs breach their obligation under Regulation (EU) No 648/2012. On the other hand, FSMA's responsibility is to: (a) issue recommendations to NBB as regards granting authorisation to institutions established in Belgium that plan to provide CCP services; (b) deal with the conflicts of interest involving CCPs; (c) be consulted by NBB when assessing the professional integrity of the directors and senior management.

2. General observations

2.1 In accordance with Decision 98/415/EC, this opinion is limited to those provisions of the draft law that relate to the NBB and that go beyond harmonisation of national law with Regulation (EU) No 648/2012.

2.2 The ECB notes that the allocation of responsibilities between the NBB and FSMA with respect to CCPs reflects the 'twin-peaks' type model of financial supervisory structures. The ECB commented on the allocation of responsibilities between the NBB and FSMA (including with respect to clearing institutions) in Opinion CON/2011/5[6].

2.3 The ECB welcomes the draft law, as the NBB's new tasks complement the NBB's existing objective to promote the smooth operation of payment and securities settlement systems and ensure

3 Article 2 of the Regulation (EU) No. 648/2012 defines 'CCP' as 'a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer'.

4 Section 13 of Article 36/1 of the Organic Statute of the National Bank of Belgium defines 'clearing institution' as 'any institution that undertakes conversion into net debt by means of novation or of the clearing of mutual claims arising from transactions on financial instruments or forward exchange transactions'.

5 As amended in paragraph 2 of Article 36/25 of the Organic Statute of the National Bank of Belgium.

6 All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

their efficiency and soundness[7], in accordance with Article 127(2) of the Treaty and the fourth indent of Article 3.1 and Article 22 of the Statute of the European Systems of Central Banks and the European Central Bank (hereinafter 'Statute of the ESCB'), as well as the NBB's tasks of contributing to the stability of the financial system[8], in accordance with Article 127(5) of the Treaty, as mirrored in Article 3.3 of the Statute of the ESCB.

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

Done at Frankfurt am Main, 12 August 2013.

[signed]

The Vice-President of the ECB
Vítor CONSTÂNCIO

7 Article 8 of the Organic Statute of the NBB.

8 Article 12 of the Organic Statute of the NBB.