EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 12 February 2014

on accounts for dematerialised securities denominated in foreign currency

(CON/2014/13)

Introduction and legal basis

On 17 January 2014, the European Central Bank (ECB) received a request from the Nationale Bank van België/Banque Nationale de Belgique (NBB) acting on behalf of the Minister for Finance for an opinion on a draft royal decree (hereinafter the 'draft royal decree') amending the Royal Decree of 14 June 1994 laying down the rules for maintaining accounts for dematerialised securities denominated in foreign currency or units of account (hereinafter the 'Royal Decree of 14 June 1994') and the Royal Decree of 26 May 1994 on the collection and payment of the withholding tax on movable property in accordance with Chapter I of the Law of 6 August 1993 on transactions in certain securities (hereinafter the 'Royal Decree of 26 May 1994'). The ECB was asked to deliver an opinion within one month in order for the Belgian government to be able to take the ECB opinion into consideration before submitting the draft law to the Belgian Parliament.

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 first, second, third and fifth indents of Article 2(1) of Council Decision 98/415/EC[1], since the draft law relates to currency matters, means of payment, the NBB and 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 law

1.1 The draft royal decree aims to increase the number of intermediaries authorised to maintain accounts with the NBB-administrated securities settlement system (hereinafter 'the NBB-SSS') for dematerialised public debt securities denominated in foreign currency[2] (hereinafter 'securities denominated in foreign currency'). By virtue of the draft royal decree, all participants in the NBB-SSS will be authorised to maintain accounts for securities denominated in foreign currency.

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 See Article 4 of the Law of 2 January 1991 on the public debt market and instruments for monetary policy, which designates the NBB as the settlement institution entrusted with the holding and settlement of dematerialised Belgian public debt securities.

Foreign currencies to be processed on the TARGET2-Securities platform (hereinafter, ‘T2S platform’) are to be governed by rules identical to those governing securities denominated in euro, whereas other foreign currencies will be governed by different rules. According to the explanatory memorandum for the draft royal decree, the suppression of any limitation as to the participants who may hold accounts for securities denominated in foreign currency improves the marketability of such securities as well as the functioning of the NBB-SSS. Such suppression also aims at harmonising the processing of all cash transfer orders on the T2S platform, irrespective of the currency in which such transfer orders are denominated.

1.2. Article 3 of the Royal Decree of 14 June 1994 provides that, unless otherwise stipulated in the issuance agreement, the counter-value in euro of securities denominated in foreign currency will be calculated on the basis of the last foreign exchange reference rates published by the ECB. Since the data for such foreign exchange reference rates are now automatically transmitted to the NBB-SSS, there will be shorter cash settlement processes for all corporate actions regarding securities denominated in foreign currency that are held in the NBB-SSS. More particularly, the NBB will notify its participants of the amount of interest and capital due in euro for securities denominated in foreign currency that are held in the NBB-SSS one business day prior to the maturity date of such securities, rather than two business days before that maturity date[3]. As a consequence, the prohibition against the transfer of such securities will only apply one business day prior to the maturity date concerned, instead of two business days prior to that maturity date, as is currently the case[4]. The withholding tax due for such transactions will also be calculated on the euro value of the securities denominated in foreign currency one business day before the maturity date[5]. For the purposes of these provisions, ‘business day’ is defined as a day on which the NBB-SSS operates[6].

2. General observations

2.1 The ECB welcomes the fact that the draft royal decree allows a much wider range of financial institutions participating in the NBB-SSS to maintain accounts for securities denominated in foreign currency. Such an amendment of the legal framework governing the NBB-SSS has already been recommended by a T2S taskforce investigating obstacles to smooth cross-Central Securities Depositories (CSD) settlement[7]. In addition, this development will ensure non-discriminatory, objective and transparent access to clearing and settlement facilities in accordance with Article 34 of Directive 2004/39[8], Article 30 of the proposal for a regulation on improving securities settlement

3 Article 2(1) of the Royal Decree of 14 June 1994, as amended by Article 2.1° of the draft royal decree.

4 Article 2(2) of the Royal Decree of 14 June 1994, as amended by Article 2.2° of the draft royal decree.

5 Article 11 of the Royal Decree of 26 May 1994, as amended by Article 3 of the draft royal decree.

6 Article 2(3) *in fine* of the Royal Decree of 14 June 1994, as amended by Article 2.3° of the draft royal decree.

7 See section 2.4.2. of the ‘Issue list for task force on smooth cross-CSD settlement’, 8 February 2011, available on the ECB’s website at www.ecb.europa.eu.

8 Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

in the European Union and on central securities depositories[9], and Principle 18 of the CPSS-IOSCO Principles for financial market infrastructures[10].

2.2. The ECB also welcomes the fact that corporate action processes are shortened due to the faster availability of the data for foreign exchange reference rates in the NBB-SSS. Nevertheless, the ECB wishes to draw the Belgian legislator's attention to the report on Market Standards for Corporate Action Processing, developed by the Corporate Actions Joint Working Group[11], which recommends that issuers effect payment as soon as possible after the payment system opens, and no later than 12 noon, local time, at the registered office of the issuer CSD. According to these standards, the blocking of holdings for cash distribution is prohibited. The NBB-SSS, in its capacity as Contracting CSD to the T2S Framework Agreement, and in cooperation with the other CSDs, seeks to harmonise its processes to make efficient use of the T2S Services. The ECB therefore encourages the Belgian legislator to work together with the NBB-SSS to determine how to fully comply with Union market standards on corporate actions.

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

Done at Frankfurt am Main, 12 February 2014.

[signed]

The President of the ECB

Mario DRAGHI

---

9 Proposal for a regulation of the European Parliament and of the Council on improving the securities settlement in the European Union and on central securities depositories (CSDs) and amending Directive 98/26/EC, COM(2012) 73 final.

10 Available on the website of the Bank for International Settlements website, at http://www.bis.org/publ/cpss101a.pdf

11 This group is composed of representatives of the main stakeholders, i.e. issuers, market infrastructures and intermediaries. The report 'Market Standards for Corporate Action Processing', revised version 2012, is available on the ECB's website at www.ecb.europa.eu.