



EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 25 May 2005

at the request of the Ministry of Finance of Luxembourg on a draft law on financial collateral arrangements

(CON/2005/12)

1. On 16 March 2005 the European Central Bank (ECB) received a request from the Ministry of Finance of Luxembourg for an opinion on a draft law on financial collateral arrangements (hereinafter the 'draft law'). The draft law was submitted to the Chamber of Representatives of Luxembourg on 25 November 2003. Subsequently the Government of Luxembourg amended the draft law on 16 April 2004. These amendments are also the subject of the present consultation.
2. The ECB's competence to deliver an opinion is based on 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 provisions¹, as the draft law relates to (i) the Banque centrale du Luxembourg (BCL) and the other central banks in the European System of Central Banks (ESCB); (ii) securities settlement systems; and (iii) the stability of financial institutions and markets.
3. The ECB notes that the main purpose of the draft law is to transpose in Luxembourg Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (hereinafter the 'Collateral Directive')². While national authorities are not obliged to consult the ECB on draft legislative provisions the exclusive purpose of which is the transposition of Community directives into the law of Member States, under Article 25.1 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'ESCB Statute') the ECB may offer advice to and be consulted by the competent authorities of the Member States on the scope and implementation of Community legislation relating to the stability of the financial system. The draft law addresses matters directly relevant to the Eurosystem's core fields of competence which will have an impact both on the efficient and safe use of financial collateral arrangements in EU financial markets and the Eurosystem's credit operations.
4. The draft law also contains certain provisions that go beyond merely transposing the Collateral Directive, including provisions on the statutory lien granted to depositories principally operating a

¹ OJ L 189, 3.7.1998, p. 42.

² OJ L 168, 27.6.2002, p. 43.

securities settlement system (SSS) that have an impact on the BCL's Statute and that relate to the incorporation into the legal framework in Luxembourg of certain provisions of the Hague Convention on the Law Applicable to Certain Rights in respect of Securities held with an Intermediary (hereinafter the 'Hague Convention'). Since the provisions on the statutory lien of depositories principally operating an SSS have implications for the BCL's lien under its Statute, the ECB addresses this matter first.

Statutory lien granted to depositories principally operating a securities settlement system

5. Under the current law in Luxembourg³ a statutory lien is granted to depositories principally operating an SSS (hereinafter the 'depositories') over a participant's own assets held by the depositories in relation to the system they operate where such assets are not affected by collateral duly notified to or accepted by the depository. For this purpose 'collateral' is defined as any realisable asset, including money, provided in the context of a pledge, repurchase agreement, fiduciary transfer or a similar agreement, or in another way, with the aim of guaranteeing the rights and obligations which may arise in the context of an SSS, or provided to Member States' central banks or to the ECB vis-à-vis such realisable assets⁴.
6. The draft law, as amended by the Government of Luxembourg, specifies that the depositories' claims vis-à-vis a participant arising from the transactions carried out by the participant on its own account, as well as on behalf of its clients, are guaranteed by the statutory lien of the depositories. The draft law also grants a lien to these depositories on the assets of a participant's clients held by the depositories in relation to the system they operate, but this lien only guarantees a depository's claims vis-à-vis a participant arising from the transactions carried out by a participant on behalf of its clients.
7. Under the law in Luxembourg this statutory lien would supersede any general or special statutory lien⁵. However, it is unclear whether it would prevail over the lien granted to the BCL, which provides that claims of the BCL, the ECB or any other national central bank (NCB) in the ESCB resulting from operations in connection with common monetary or exchange rate policies will have priority over all debtor assets, whether held with the BCL or with an SSS or any other counterpart in Luxembourg, and that this lien ranks equally with that of a pledgee⁶.
8. The statutory lien granted to the depositories on the assets of a participant's clients held in relation to the system which they operate increases, in terms of scope, the risk of potential conflicts

³ Article 17 of the *loi du 1^{er} août 2001 concernant la circulation de titres et d'autres instruments fongibles* (Law of 1 August 2001 on the circulation of securities and other fungible instruments; hereinafter the 'Securities Law').

⁴ Article 25(4)(b) of the draft law, amended by Governmental Amendment No 7 relating to the statutory lien granted to depositories, repeats the provisions of Article 17 of the Securities Law. The definition now refers to the central bank members of the ESCB.

⁵ The second paragraph of Article 17 of the Securities Law (and Article 25(4)(b) of the draft law, as amended by Governmental Amendment No 7).

⁶ Article 4(4) of the *loi du 23 décembre 1998 relative au statut monétaire et à la Banque centrale du Luxembourg* (Law of 23 December 1998 on the monetary status and the Banque centrale du Luxembourg), under the subheading 'Financial bases'.

between the statutory lien of the depositories and the lien of the BCL and the ESCB central banks. It is noted in this respect that the lien of the BCL and the ESCB central banks has, in large part, been introduced into the law in Luxembourg in order to reinforce the BCL's financial position⁷, thereby assisting the BCL and the Eurosystem in performing their central banking tasks. In this regard the ECB takes note of the particular situation of the BCL within the Eurosystem. The risks stemming from the BCL's operations with the financial sector⁸ are of systemic relevance in view of the relative importance of the financial market in Luxembourg. The BCL is the third largest national central bank within the Eurosystem⁹ in terms of liquidity granted to credit institutions and the amount of collateral used for monetary policy operations. A substantial part of the assets used to collateralise Eurosystem credit operations on a cross-border basis originates in Luxembourg. Furthermore, the Standards for the use of EU Securities Settlement Systems in ESCB credit operations, published in 1998, are relevant from the perspective of the Eurosystem as a user of a central securities depository operating an SSS. Standard 1 states that an SSS must provide adequate protection of the rights of the NCBs and the ECB in respect of securities held on their accounts in such systems. Against this backdrop, the ECB would strongly prefer a statutory lien granted to the depositories that does not prejudice the legal position of the BCL and the ESCB central banks in performing their central banking functions. The ECB hopes that the relevant provisions of the draft law can be amended accordingly in order to fully secure the legal position of the BCL and the ESCB central banks.

9. The ECB notes that both the current law in Luxembourg and the provisions of the draft law exclude from the scope of the statutory lien granted to the depositories any own assets of participants, which are affected by collateral duly notified to or accepted by the depository. The ECB is of the view that this exclusion should also apply to the assets of participants' clients, which are affected by collateral duly notified to or accepted by the depository. Furthermore, the statutory lien of depositories, including the lien on the assets of a participant's clients intended by the draft law, should not cover the BCL's assets or the assets provided as collateral to the BCL or another central bank member of the Eurosystem, regardless of any notification or acceptance requirement, which in any case should not affect the realisation and enforceability of such collateral.
10. The comments on the articles of the draft law point out that the lien over the assets of a participant's clients is very limited since, as mentioned in paragraph 6 above, it only covers the assets of a participant's clients in respect of transactions carried out on behalf of those clients¹⁰. The statutory lien of qualified intermediaries and clearing and settlement institutions¹¹ under

⁷ Report of the *Commission des Finances et du Budget* (Commission of Finances and Budget in Luxembourg, 10.12.1998) on draft law No 4468/07, p. 2.

⁸ Draft law No 4468/07, comments on the articles, comment on Article 4(4), p. 9.

⁹ Comments on key figures of the 2004 BCL accounts are available on the BCL website (<http://www.bcl.lu>).

¹⁰ See the comments on the articles, comment on Article 25(4), p. 23.

¹¹ Referred to in Article 31 of the *loi du 2 août 2002 relative à la surveillance du secteur financier et aux services financiers* (Law of 2 August 2002 on the supervision of the financial sector and on financial services).

Belgian law¹² also covers the assets of clients and, in the case of clearing and settlement institutions, the assets of a participant's clients. However, under Belgian law, the assets of a participant's clients can only be credited to an account with the relevant intermediary or clearing and settlement institution (and therefore be covered by the statutory lien) if those clients give their written consent¹³. It is noted in this respect that one of the rules set out in the ESCB-CESR Standards for Securities Clearing and Settlement in the European Union¹⁴ lays down that entities holding securities in custody must not use the customer's securities for any transaction unless they have obtained the customer's explicit consent. Under Directive 2004/39/EC¹⁵, the same principles apply to investment firms¹⁶. Furthermore, Belgian law expressly provides for criminal sanctions for those who, acting on behalf of an intermediary, use the financial instruments of clients without their written consent, whether this use is for their own profit, the profit of the intermediary or the profit of third parties¹⁷. Under Belgian law, there is also a requirement of segregation between the assets of participants' clients and the own assets of a participant¹⁸. Finally, there is a solidarity mechanism between all the clients of a particular participant within the system under which, in the event of the participant's insolvency, the clearing or settlement institution will enforce its lien on the assets of this participant's clients taken as a whole, i.e. without taking into account the positions of the individual clients¹⁹. In the case of Luxembourg, the ECB notes that the draft law does not

12 Article 10(1) of the *loi du 15 décembre 2004 relative aux sûretés financières et portant des dispositions fiscales diverses en matière de conventions constitutives de sûreté réelle et de prêts portant sur des instruments financiers* (Law of 15 December 2004 on financial collateral and various tax provisions in relation to *in rem* collateral arrangements and loans for financial instruments). Under Article 10(1) and (2) of this law, unless otherwise agreed between the parties, the lien of the pledgee prevails over the statutory lien of qualified intermediaries and clearing and settlement institutions as well as over the statutory lien of the Nationale Bank van België/Banque Nationale de Belgique (hereinafter the 'NBB'), provided that the intermediary, the institution or the NBB, as the case may be, has agreed to register this pledge on financial instruments covered by the statutory lien to a special account in its books or has acknowledged that cash has been given as collateral.

13 Article 148(3) of the *loi du 6 avril 1995 relative au statut des entreprises d'investissement et à leur contrôle, aux intermédiaires et conseillers en placements* (Law of 6 April 1995 on the legal status and supervision of investment firms, intermediaries and investment advisers), title as amended by the Law of 2 August 2002; and Article 31(5) of the Law of 2 August 2002.

14 Standard 12, key element 6 of the Standards for Securities Clearing and Settlement in the European Union, jointly published by the ESCB and the Committee of European Securities Regulators (CESR), October 2004; available on the CESR and ECB websites (<http://www.cesr-eu.org> and <http://www.ecb.int>).

15 Article 13(7) and (8) of 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; hereinafter the 'MiFID').

16 Under Article 13(7) of the MiFID, when holding financial instruments belonging to clients, investment firms must safeguard clients' ownership rights, especially in the event of the investment firm's insolvency, and prevent the use of a client's instruments on own account except with the client's express consent. Article 13(8) of the MiFID provides that investment firms must also, except in the case of credit institutions, prevent the use of client funds for their own account.

17 Article 148(3) of the Law of 6 April 1995.

18 Article 26(16°) of the Law of 2 August 2002.

19 Comments on the articles of the *projet de loi modifiant la loi du 6 avril 1995 relative aux marchés secondaires, au statut des entreprises d'investissement et à leur contrôle, aux intermédiaires et conseillers en placement, et la loi du 4 décembre 1990 relative aux opérations financières et aux marchés financiers* (draft law amending the Law of 6 April 1995 on secondary markets, the legal status and supervision of investment firms, intermediaries and investment advisers, and the Law of 4 December 1990 on financial operations and financial markets), 5 December 1995, comment on Article 9, p. 7; and the comments on the articles of the *projet de loi relative à la surveillance du secteur financier et aux services financiers* (draft law on the supervision of the financial sector and on financial services), 4 June 2002, comment on Article 31, p. 70.

indicate whether the assets of participants' clients would be treated on an individual basis and does not have any requirement to obtain the client's consent for the use of these assets. Against this background, the ECB is of the view that the authorities of Luxembourg should consider the adoption of appropriate mechanisms ensuring both the protection of clients' assets and the smooth operation of the clearing and settlement system.

11. Finally, the ECB understands that if a lien on the assets of a participant's clients is granted to depositories, as contemplated by the draft law, the assets of a participant's clients would not be available to collateralise credit extended to participants. However, it should be ensured that the increased opportunities for custodians to receive (intraday) credit, in cases where there are insufficient financial assets to collateralise such credit, do not risk creating moral hazard.

General comments regarding implementation of the Collateral Directive

12. As previously noted, the ECB has an interest in the harmonised implementation of the Collateral Directive²⁰. In this regard, the ECB very much welcomes the fact that the draft law does not avail itself of any of the opt-out possibilities provided in the Directive. This will also help to ensure a broad application of the Directive's provisions under the law in Luxembourg. In this regard the ECB would like to recall its position that 'simple and reliable methods of collateralisation, which include efficient enforcement methods, are of fundamental interest to the Eurosystem, as they help, *inter alia*, to ensure the smooth functioning of the Eurosystem's single monetary policy'²¹. For this reason, the ECB supports the authorities of Luxembourg's grouping into a single law the provisions on different kinds of financial collateral arrangements.

Personal scope of the Collateral Directive

13. The draft law applies to operations transferring title to assets as collateral, including by fiduciary means, and to operations involving repurchase agreements on property, in which the assignor or the assignee or both are 'finance professionals'²². The recognition of the validity and third party enforceability of insolvency netting is subject to the condition that they result from operations subject to agreements or bilateral or multilateral netting clauses between two or more parties of whom at least one is a 'finance professional'²³. This concept of a 'finance professional' is very wide and encompasses, in addition to various public authorities and financial entities, any commercial or industrial establishment with professional access to the financial market, pension funds, securitisation bodies, entities or bodies participating in a securitisation operation and any

²⁰ See paragraph 2 of ECB Opinion CON/2003/11 of 26 June 2003 at the request of the Austrian Federal Ministry of Justice on a draft Federal law implementing Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements. See also paragraph 3 of ECB Opinion CON/2004/27 of 4 August 2004 at the request of the Belgian Ministry of Finance on a draft law on financial collateral and various tax provisions in relation to *in rem* collateral arrangements and loans for financial instruments. Both are available on the ECB's website (<http://www.ecb.int>).

²¹ Paragraph 4 of ECB Opinion CON/2004/27.

²² Articles 13 and 15 of the draft law.

²³ Article 18 of the draft law.

other financial sector professional²⁴. As emphasised by the ECB in previous opinions ‘establishing different regimes for the creation and use of the same kind of collateral, depending on the type of parties involved, implies evaluating the status of the parties to an arrangement and tends to disrupt the operation of collateralised transactions’²⁵. The ECB welcomes the fact that the personal scope of the draft law goes beyond the Collateral Directive’s requirements. In this respect, the fact that the concept of ‘commercial or industrial establishment enjoying professional access to the financial market’, includes for example, the finance company of a group or special vehicle enjoying the support of a large group²⁶, tends to indicate that the draft law would cover arrangements between two unregulated entities²⁷. When implementing the Collateral Directive a comparable approach was also followed in Denmark²⁸ and Germany²⁹ with respect to transactions between corporates.

14. As regards pledges³⁰, the draft law applies, whatever the nature of the parties to the financial collateral arrangements, without restricting the categories of collateral takers or providers³¹. The ECB notes in this respect that the Conseil d’Etat (the Council of State of Luxembourg), in a recent opinion³², suggests that, along the lines of the legislation adopted in Belgium³³, there should not be any limitation in terms of personal scope on other types of financial collateral arrangements such as repurchase agreements or transfers of title as collateral. This would imply that the requirement for the arrangements to be concluded with one finance professional would be abandoned, except for fiduciaries³⁴. In line with its comments on the draft Belgian law on financial collateral³⁵, the ECB would welcome a ‘broad scope and uniform approach to financial collateral arrangements’.

Material scope of the Collateral Directive

15. The draft law applies to pledge contracts concerning assets (*‘avoirs’*)³⁶, operations transferring title to assets as collateral³⁷ and repurchase operations concerning all kinds of tangible or intangible property³⁸. Assets are defined as financial instruments and claims. While the concept of claims is not further defined in the draft law, financial instruments are defined in the broadest sense. The

24 Article 1(12) of the draft law.

25 Paragraph 4 of ECB Opinion CON/2004/27.

26 Comments on the articles of the draft law, comment on Article 1.

27 See in this respect the opinion of the Chamber of Commerce of Luxembourg, 23 August 2004, p. 2.

28 *L 2003-12-19 nr 1171 Ændring af lov om værdipapirhandel m.v., lov om finansiel virksomhed med flere love*; Act No 1171 of 19 December 2003, amending the law on trade in securities etc., the law on investment companies, and other legal acts.

29 *Gesetz zur Umsetzung der Richtlinie 2002/47/EG vom 6. Juni 2002 über Finanzsicherheiten und zur Änderung des Hypothekbankgesetzes und anderer Gesetze* (Law transposing Directive 2002/47/EC of 6 June 2002 on financial collateral and amending the Mortgage Banking Law and other Laws).

30 Articles 3 to 12 of the draft law.

31 This is confirmed by Article 18 of the draft law.

32 Council of State of Luxembourg opinion of 13 April 2005 on Articles 13, 14, 15 and 18.

33 Law of 15 December 2004.

34 Opinion of the Council of State of Luxembourg of 13 April 2005 on Articles 13 and 14, p. 10.

35 Paragraph 4 of ECB Opinion CON/2004/27.

36 Article 3 of the draft law.

37 Article 13 of the draft law.

38 Article 15 and Article 16(2) of the draft law.

ECB understands that credit claims in the form of bank loans would be covered by the draft law. The ECB welcomes the approach proposed by the authorities of Luxembourg since it is in line with the ECB's recommendation in its opinion on the proposed collateral directive, a recommendation which the ECB still supports. In particular, the ECB proposed extending the scope to 'cover all types of assets that are eligible for Eurosystem credit operations, including, *inter alia*, credit claims in the form of bank loans'³⁹. To date, some Member States have chosen to go beyond the Collateral Directive's requirements with regard to the definition of the implementing legislation's material scope, as the Collateral Directive refers to the more narrowly defined concepts of 'financial instruments' and 'cash'. For example, in France, the material scope of the legislation implementing the Collateral Directive is extended to claims, bills and contracts, and different forms of rights, provided that they are assignable⁴⁰, while in Sweden the scope of the draft legislation transposing the Collateral Directive encompasses money loans⁴¹.

Netting provisions

16. The draft law covers the 'netting of assets'⁴² which includes both claims and financial instruments. Furthermore, the draft law's definition of 'close-out netting provision'⁴³ is very similar to the corresponding definition in the Collateral Directive⁴⁴. Title V of the draft law refers to the concepts of 'close out netting', 'netting', 'agreements (*conventions*) or bilateral or multilateral netting clauses between two or more parties', and also 'netting agreements' (*contrats de compensation*). The ECB notes that other provisions of the law in Luxembourg refer to the concept of '*conventions de compensation et de novation*'⁴⁵. The comments on the articles justify the separate reference to netting agreements by the fact that netting may be either (i) a means of realising a financial collateral arrangement, in which case it is covered by this term; or (ii) an independent contract between professionals or between a professional and a non-professional, with this latter case covered by the use of the term 'netting agreement'⁴⁶. For the sake of clarity, it might be useful to define the concept of 'netting agreements' in the general provisions of the draft law and to ensure consistency in the use of the concepts of '*contrat*' or '*convention*' in relation to netting in both the draft law and other relevant provisions of the law in Luxembourg.

³⁹ Paragraph 10 of ECB Opinion CON/2001/13 of 13 June 2001 at the request of the Council of the European Union concerning a proposal for a Directive of the European Parliament and of the Council on financial collateral agreements (OJ C 196, 12.7.2001, p. 10). See also paragraph 6 of ECB Opinion CON/2003/11.

⁴⁰ Articles L.431-7-1 and following of the *Code Monétaire et Financier* (the French Monetary and Financial Code), as amended by Ordinance No 2005-171 of 24 February 2005.

⁴¹ See the Swedish legislative proposal on financial collateral (*Regeringens proposition 2004/05:30 om finansiella säkerheter*), adopted in April 2005, and the legislative amendments entering into force on 1 May 2005.

⁴² Article 18 of the draft law.

⁴³ Article 1(2) of the draft law.

⁴⁴ Article 2(1)(n) of the Collateral Directive.

⁴⁵ Article 61-14 of the *loi du 5 avril 1993 relative au secteur financier* (Law of 5 April 1993 on the financial sector).

⁴⁶ Comment on Article 2, p. 15.

Private international law issues

17. The draft law contains a specific title on private international law issues which aims in particular to transpose the conflict-of-law rule contained in the Collateral Directive. In this respect, the ECB notes that the draft law reproduces almost verbatim the conflict-of-law provisions of the Directive⁴⁷. However, the draft law departs slightly from the Directive since two paragraphs have been added to the list of matters that may arise in relation to book-entry securities collateral that, under the Directive, are governed by the law of the country in which the relevant account is maintained⁴⁸. These two additional matters concern respectively: (i) the duties of the keeper of the relevant account towards a person other than the holder of the relevant account who claims concurrent rights on book-entry securities with this keeper against the relevant account holder or any other person⁴⁹; and (ii) the extension of the financial collateral arrangement for book-entry securities to entitlements to dividends, income or other distributions, or to redemption, sale or other proceeds⁵⁰. The ECB has, in principle, no objection to these additional matters being subjected to the Collateral Directive's conflict-of-law rule, although this goes beyond the Directive's requirements.
18. The comments on the articles of the draft law⁵¹ point out that these two matters are directly inspired by the Hague Convention⁵² and that 'since, according to the timetable currently planned, the Convention should be ratified rather rapidly and thus replace the Directive, it appeared useful to harmonise the scope of [Luxembourg] legislation with the scope of the Convention'⁵³. The ECB stated in its recent opinion on a proposal for a Council decision concerning the signing of the Hague Convention that it 'would, in view of the Convention's possible implications and current Community legislation, ... welcome a comprehensive prior assessment of the Convention's impact in the Community. [...] In order not to pre-empt an open-ended outcome, this assessment should be undertaken prior to a discussion of the possible signature of the Convention, considering that the existing Community regime is sufficiently satisfactory and does not require an urgent or compelling signature of the Convention'⁵⁴. The European Commission shares this view and indicated in a recent Green Paper⁵⁵ that it would prepare a legal assessment evaluating the concerns raised by the end of 2005, enabling it to decide then whether changes would be needed to the abovementioned proposal for a Council decision.

47 Article 23(1) and (2) of the draft law implementing Article 9(1) and (2) of the Collateral Directive.

48 Article 9(1) of the Collateral Directive.

49 Article 23(2)(d) of the draft law.

50 Article 23(2)(f) of the draft law.

51 Comment on Article 23, p. 22.

52 Article 2(1)(e) and (g) of the Convention.

53 Comment on Article 23, p. 22; November 2003.

54 Paragraph 20 of ECB Opinion CON/2005/7 of 17 March 2005 at the request of the Council of the European Union on a proposal for a Council decision concerning the signing of the Hague Convention on the Law applicable to certain rights in respect of securities held with an intermediary (COM(2003) 783 final), (OJ C 81, 2.4.2005, p. 10).

55 'Green Paper on Financial Services Policy (2005-2010)', COM(2005) 177, 3 May 2005, p. 10; available on the website of the European Commission (<http://www.europa.eu.int>).

19. The ECB doubts, as suggested in the explanatory text to the draft law, that the Hague Convention may serve as a basis for interpreting the conflict-of-law rule contained in the draft law. The essence of the Hague Convention's conflict-of-law regime⁵⁶ is that the law applicable to the issues covered by the Convention is the law in force in the State that the relevant intermediary and the account holder have expressly agreed as governing their account agreement, or the law of the State that their agreement expressly provides as applying to these issues. This primary rule is only tempered by the 'reality test' whereby the Convention also requires the relevant intermediary to have, at the time of the agreement, an office in that State which is engaged in a business or other regular activity of maintaining securities accounts. By contrast, the conflict-of-law rule proposed by the draft law refers to the law of the country in which the relevant account is located. This location-based conflict-of-law rule is inconsistent with the Hague Convention's conflict-of-law rule, which is primarily based on the freedom of contract of the relevant intermediary and the account holder, subject only to a relevant office requirement in order to avoid entirely arbitrary choices. If the Hague Convention were to be ratified by the Community, it would not therefore be possible to apply the conflict-of-law rule established by the draft law in the light of the Convention.
20. This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 25 May 2005.

[signed]

The President of the ECB

Jean-Claude TRICHET

⁵⁶ Article 4(1) of the Hague Convention.